

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1091**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause on August 31, 2019 and was disqualified from receiving benefits effective August 25, 2019 (decision # 91339). Claimant filed a timely request for hearing. On October 22, 2019, ALJ S. Lee conducted a hearing, and on October 31, 2019 issued Order No. 19-UI-139034, concluding claimant voluntarily left work without good cause on September 1, 2019, and was disqualified from receiving benefits effective September 1, 2019.<sup>1</sup> On November 14, 2019, claimant filed an application for review of Order No. 19-UI-139034 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Mercedes-Benz of Beaverton employed claimant as a used car sales manager from February 25, 2019 to September 1, 2019.

(2) Claimant moved from California to Oregon to accept the position offered by the employer. When claimant accepted the position, he understood that he would be making less money than he had made in California, but also understood that the position offered a greater opportunity for advancement than his former position, which is the reason he accepted work with the employer. Because claimant was a new father, claimant requested two days off per week, which the general manager at the time of claimant's hire accommodated for several months until that manager left the employer. Claimant also understood when he began work with the employer that the employer was short-staffed one sales manager, and was attempting to fill that position. Claimant understood that until the employer filled the position, he might have to work a greater number of hours than he originally anticipated.

(3) After the original general manager left, the employer scheduled claimant to work six or seven days per week because the employer had not filled the sales manager position. In addition to working his

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<sup>1</sup> Order No. 19-UI-139034 stated that it was affirming decision # 91339. Order No. 19-UI-139034 at 4. However, because Order No. 19-UI-139034 changed the effective date of the disqualification from August 25, 2019 to September 1, 2019, it should have stated that it was modifying decision # 91339.

scheduled hours, the employer required claimant to attend weekly one-hour sales and manager meetings, even if claimant was not scheduled to work on the mornings the meetings were conducted. On weekends, when claimant was scheduled to work until close, he was not able to leave until all customer deals had been finalized. The substantial hours claimant worked created stress between claimant and his girlfriend at home, and also bothered claimant because it reduced the hours he could spend with his new-born daughter. When the employer's new general manager (RB) worked the same shift as claimant, he often offered to close so that claimant could go home to his family.

(4) RB occasionally spoke to claimant or texted him about transaction errors he was making, such as offering multiple rebates, which was affecting the employer's profitability. Sometimes when he did, RB made comments that claimant considered unprofessional, such as comments that claimant believed questioned claimant's managerial ability and work ethic. Exhibit 2. Claimant felt insulted by those comments.

(5) Claimant decided to pursue a transfer to another employer dealership because he was very unhappy with working at the dealership where he was originally hired. He found a dealership that would accept a transfer and RB did not object to it. However, the employer required a vice-president to approve any transfer between dealerships, and the vice president in question refused to approve it and told claimant that if he could not make his employment at his current dealership work, the employer would find someone else. Transcript at 8.

(6) Claimant began experiencing significant stress, caused in part by his home life because his girlfriend was unhappy about living in Oregon and claimant's substantial hours at work, and in part by his circumstances at work. Claimant's stress occasionally resulted in medical symptoms such as anxiety, migraines and nosebleeds. Claimant spoke to his physician about his circumstances and symptoms, and although his physician suggested that claimant begin taking some medication, claimant declined. Claimant's physician never suggested that claimant reduce his work hours or quit work due to the stress he was experiencing on the job.

(7) In late August 2019, claimant learned that RB had scheduled him to work approximately 200 hours in September 2019. Exhibit 2. On August 31, 2019, RB also told him that he wanted claimant to come in a half hour earlier than usual because claimant had been coming in 15 minutes late, which he thought was a bad message for other employees.

(8) On September 1, 2019, claimant resigned and explained that he was resigning from his job for "personal reasons effective immediately." Exhibit 1. Claimant quit because he had just been scheduled to work 200 hours in the coming month, his transfer request had been denied, he believed his overall work environment was "hostile," and his girlfriend was unhappy about living in Oregon and claimant's excessive work hours. Transcript at 51.

(9) Before quitting, claimant did not complain to the employer's human resources office about his circumstances at work that he considered unreasonable or hostile, and did not complain to RB about his September 2019 schedule because he considered him a friend and did not want to hurt his feelings.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4) (December 23, 2018). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Claimant quit work on September 1, 2019 because the employer had just scheduled him to work 200 hours in September, he believed RB had been unprofessional and rude to him in the past, his transfer request had been denied, and his girlfriend was unhappy about living in Oregon and claimant’s excessive work hours away from home. However, claimant failed to establish that he left work with good cause for those reasons.

Although being required to work approximately 200 hours in a given month is approximately 47 hours per week,<sup>2</sup> or 7 hours greater than full time, given his salaried position of manager, the nature of his occupation and the employer’s shortage of one manager, viewed objectively, it was not unreasonable. Moreover, the employer was attempting to hire an additional sales manager to alleviate the number of hours required of claimant, and claimant decided to not discuss the matter with RB because he considered him a friend. Although RB’s text messages or comments to claimant may have been unprofessional and somewhat rude, and he may have considered the denial of his transfer request to have been unreasonable, claimant did not consider those circumstances so offensive, hostile or grave that he was motivated to complain about those issues to the employer’s human resources department. Finally, although claimant may have believed that his circumstances at work had become so serious that they were negatively affecting his health, he did not assert or show that they were so severe that his provider recommended that he seek changes in his work environment or quit his job.

Under those circumstances, viewed objectively, claimant failed to establish that his concerns constituted reasons of such gravity that no reasonable and prudent car sales manager of normal sensitivity, in claimant’s circumstances, would have concluded there was no reasonable alternative but to quit his job when he did. Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Order No. 19-UI-139034 is affirmed.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service: December 18, 2019**

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<sup>2</sup> 52 weeks per year/12 months = 4.3 weeks per month. 200 hours per month/4.3 weeks = 46.5 hours per week.

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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