

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1099**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132644). Claimant filed a timely request for hearing. On October 29, 2019, ALJ Murray-Roberts conducted a hearing, and on November 4, 2019, issued Order No. 19-UI-139155, affirming the Department's decision. On November 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) A+ Flagging Inc. employed claimant as a part-time, on-call flagger from July 29, 2019 to September 13, 2019.

(2) Claimant averaged 28 hours per week of work for the employer at a wage of \$25.77 per hour. Claimant became concerned she would "lose her house over [her] job" because of the limited income she earned working for the employer. Transcript at 24.

(3) Claimant sought other, similar work and on Friday, September 13, 2019, was offered and accepted a job as an on-call, part-time flagger for another company (CPS). Claimant's hourly wage for CPS was \$27.77 per hour for regular time and \$41.66 per hour for overtime. Claimant believed that she would earn more income working for CPS because in addition to the higher hourly wage, CPS had many construction contracts which claimant believed would result in more work hours for her. When claimant was hired by CPS, she was told she would begin work on Monday, September 16, 2019, and would work four consecutive 12-hour shifts the first week from September 16 through September 19, 2019. She also was told she would have to take a drug test on September 13, 2019, and if the employer learned that she failed it after beginning work she would be discharged. After accepting the offer from CPS, claimant notified the employer that she was resigning, effective immediately. Claimant took the required drug test later that day.

(4) On September 16, 2019, claimant's beginning shift at CPS was rescheduled to begin on September 22, 2019. Also, on September 16, 2019 the employer received the results of claimant's drug test which showed that claimant had passed it. Claimant began work for CPS on September 22, 2019.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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). In applying OAR 471-030-0038(4), an individual who leaves work to accept an offer of other work has shown good cause for leaving if "the offer [of other work] is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances," the offered work "can reasonably be expected to continue," and the offered work pays "an amount equal to or in excess of the weekly benefit amount" or "an amount greater than the work left." OAR 471-030-0038 (5)(a).

Order No. 19-UI-139155 concluded that claimant voluntarily left work without good cause, reasoning that because the job offer from CPS "did not include a set amount of hours per week" and claimant did not begin work until after she took her drug test, it was "not a definite job offer." Order No. 19-UI-139155 at 3. However, not including "a set amount of hours per week" does not make a job offer indefinite, particularly when the job is in an industry where part-time, on-call work hours are the norm. Transcript at 8, 19. Additionally, there was no dispute that on September 13, 2019, before she resigned from the employer and before she was required to take the drug test, claimant had actually accepted an offer of similar, on-call, part-time work as a flagger that paid \$2.00 more per hour, and that CPS hired her and scheduled her to begin working without knowing the results of a drug test. Transcript at 21. More likely than not, the job offer claimant accepted would pay more than the job claimant left because the hourly rate was higher, and the new employer had more contracts and therefore more possible work assignments for claimant than the employer had. Claimant was even scheduled for more hours in her first week with CPS (48) than the average number of hours she worked in a week for the employer (28).

Viewing the record as a whole, claimant quit work to accept CPS's definite offer of work, which was scheduled to begin in the shortest length of time reasonable under the circumstances. The work was reasonably expected to continue, and paid an amount greater than the work claimant left. Accordingly, under OAR 471-030-0038 (5)(a), claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Order No. 19-UI-139155 is set aside, as outlined above.<sup>1</sup>

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<sup>1</sup> This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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

**DATE of Service: December 19, 2019**

**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**

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**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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