

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0211**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 114356). Claimant filed a timely request for hearing. On December 5, 2019, ALJ Frank conducted a hearing, and on December 13, 2019 issued Order No. 19-UI-141207, affirming the Department's decision. On December 30, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On January 30, 2020, EAB issued Appeals Board Decision 2020-EAB-0001, reversing Order No. 19-UI-141207 and remanding the case to the Office of Administrative Hearings (OAH) for additional information.

On February 20, 2020, ALJ Frank conducted a hearing on remand, and on February 28, 2020, issued Order No. 20-UI-145332, concluding claimant voluntarily left work without good cause. On March 6, 2020, claimant filed an application for review of Order No. 20-UI-145332 with EAB.

**FINDINGS OF FACT:** (1) Von Klein Property Management, LLC employed claimant from March 2011 to September 27, 2019. Claimant worked as a maintenance assistant to the head of cleaning and grounds, she also performed various office duties.

(2) For some time prior to, and including July 30, 2019, claimant was subjected to offensive and physically threatening behavior by a maintenance coworker. Claimant had a work desk in the employer's office. Behind her was a table where maintenance personnel routinely conversed and completed paperwork. While there, the coworker in question often moved a chair to an area immediately behind claimant or next to her while she was attempting to work, without any prompting on claimant's part. He would then kick her chair or place his boots on them while she remained sitting at her desk. Sometimes the coworker tossed trash from his breakfast at claimant while she tried to work. On one occasion, the coworker, who claimant knew was a hunter, pretended he had a gun, pointed it at the back of claimant's head and made noises like a gun shooting. The coworker knew claimant had a back condition and on one occasion told claimant that he "was going to jump on my back and ride me," to which claimant responded, "Don't touch me." Exhibit 1; Audio Record (February 20, 2020 hearing) at 26:00 to 27:00. On another occasion, while claimant was bent over accessing a file cabinet, the

coworker jabbed his fingers into her abdomen right under her ribs, where she had been experiencing pain, causing her increased pain. On other occasions, he used his arms and body to pin her against a door she had attempted to access, stating, "I'm not going to let you go," or "I'm going to hold you here," or "I'm going to hug all over you sis." Exhibit 1.

(3) Claimant complained to the owner about the coworker's behavior, and requested that her desk be moved to a different work area under surveillance cameras. Although the owner asked her husband to speak with the offending coworker, the owner took claimant's complaints "with a grain of salt." Audio Record (February 20, 2020 hearing) at 24:30 to 27:00. Claimant's desk was not moved and the offensive behavior continued. Exhibit 1.

(4) On July 30, 2019, claimant submitted a two-week notice of resignation, effective August 13, 2019, to the employer. When claimant submitted the notice of resignation, she explained that she was resigning due to the coworker's offensive behavior, which had continued after her complaints. She explained that she had "had enough." Audio Record (February 20, 2020 hearing) at 33:45 to 35:00.

(5) On August 8, 2019, the employer's owner offered claimant a \$500 bonus, and to relocate her desk to an area where cameras had been installed, if she stayed through September 30, 2019. Claimant accepted as she was a single mother with no other income. After claimant's desk was relocated, the coworker's offensive behavior ended.

(6) On September 25, 2019, claimant asked the owner if she could rescind her resignation, which the owner declined, because they were "ready to move on." Audio Record (February 20, 2020 hearing) at 16:00 to 18:20.

**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). 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.

Order No. 20-UI-145332 concluded that claimant quit work without good cause, reasoning that although claimant had quit, in part, due to "sexual harassment in the workplace," that issue had been resolved "prior to her resignation." Order No. 20-UI-145332 at 4. However, the record does not support that conclusion.

Claimant submitted her notice of resignation to the employer on July 30, 2019 due to her coworker's offensive and physically abusive behavior toward her, because she had "had enough." Abusive working conditions can, under some circumstances, amount to good cause. See *McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to "sacrifice all other than economic objectives

and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”). Here, claimant’s coworker continually subjected claimant to offensive and physically abusive and threatening behavior. The behavior included kicking claimant’s chair while she worked, throwing trash at her, pretending to shoot her, threatening to jump on her back and “ride [her],” jabbing his fingers into her abdomen to cause her pain and using his arms and body to block her from getting to a door while stating, “I’m not going to let you go,” or “I’m going to hold you here,” or “I’m going to hug all over you sis.” Claimant complained to the employer on numerous occasions about the harassing behavior, and requested that she be allowed to move her desk away from the harassing coworker to an area where surveillance cameras had been installed, prior to submitting her resignation. However, the employer did not allow claimant to move her desk away from the harassing coworker until after she told the employer she was quitting because of the harassment. The coworker’s harassment continued until approximately sometime after August 8, 2019, when the employer agreed to move claimant’s desk if she agreed to continue working for the employer through September 30, 2019.

Here, the coworker’s actual behavior exceeded any permissible bounds, which the owner did not dispute although she asserted she took them “with a grain of salt.” On this record, claimant established that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant’s circumstances, would have concluded that she had no reasonable alternative but to resign from work on July 30, 2019, when claimant did. Claimant therefore 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. 20-UI-145332 is set aside, as outlined above.

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

**DATE of Service:** April 14, 2020

**NOTE:** 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.

**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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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