

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0285**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit working for the employer without good cause and was disqualified from receiving benefits beginning December 29, 2019 (decision # 155935). Claimant filed a timely request for hearing. On March 5, 2020, ALJ Murdock conducted a hearing, and on March 9, 2020 issued Order No. 20-UI-145897, affirming the Department's decision. On March 30, 2020, 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) Hyland Software, Inc., employed claimant as a senior account executive from November 9, 2017 to December 31, 2019. Claimant was paid salary plus commission, and the terms of the employer's sales contract with claimant included the requirement that claimant meet a 65% annual sales threshold.

(2) Prior to his hire, claimant's expectation was that he would be selling the employer's "on base" software in the Portland marketplace. Audio Record at 10:40. Shortly after his hire date, in 2018, the employer informed claimant that he would be selling a completely different software product, which he did not know when he accepted his employment.

(3) Claimant spent 2018 building a base of sales opportunities in his territory, and he expected that by laying this "groundwork" he would be successful in meeting his sales requirements in 2019. Audio Record at 11:55. However, in the first quarter of 2019, the employer informed claimant that it was changing his sales territory to a different sales territory, which resulted in claimant losing 95% of the accounts that he had started with. As a result, claimant felt like a "new hire" all over again because the territory change required him to have to rebuild sales relationships and opportunities in order to generate

income. Audio Record at 11:35. Claimant viewed the employer's 2018 decision to change the software package claimant would be selling, and the employer's 2019 decision to change his sales territory to a different sales territory, as establishing a "pattern" of the employer changing claimant's sales territories, which reduced his sales and income opportunities. Audio Record at 3:50; 10:33.

(4) During the third quarter of 2019, the employer gave claimant a verbal warning that because his year-to-date sales were not meeting the 65% threshold, he could face disciplinary action and/or termination. Claimant later had a conversation with his employer regarding the makeup of his current sales territory and his belief that a change to his sales territory would be necessary in order for him to improve his sales in 2020. Claimant believed "the territory simply did not have the right mix of opportunities to sustain the performance needed to meet a 65% threshold and unless [the employer] changed the type of territory that [claimant] had there would be no way to make these numbers, so essentially it was a setup for failure with no way for [claimant] to mitigate that." Audio Record at 5:55. The employer told claimant there would be no changes to his sales territory.

(5) In December 2019, claimant provided the employer two weeks' notice of his resignation due to the employer's alleged pattern of changing claimant's sales territories to less sustainable territories, which reduced his sales and income opportunities. Claimant hoped that his decision to give notice would trigger discussion between the claimant and the employer and lead to a change in claimant's employment circumstances that would benefit both parties. Claimant was not the subject of any disciplinary actions at the time he provided the employer notice, but he believed that disciplinary action, including potential termination, would inevitably result in 2020, given his inability to meet the 65% sales threshold in his current territory and the employer's unwillingness to change his current sales territory.

(6) On December 31, 2019, claimant voluntarily left work with the employer.

(7) Claimant's W-2 for tax year 2018 reflected \$123,000 in income and his W-2 for tax year 2019 reflected \$105,000 in income.

**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). "[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. "[F]or a claimant to voluntarily leave work, the claimant must derive some benefit from leaving work." *Oregon Public Utility Commission v. Employment Dep't*, 267 Or App 68, 340 P3d 136 (2014).

The preponderance of the evidence demonstrates that claimant voluntarily left work without good cause. The record demonstrates that claimant based his decision to voluntarily leave work on two factors, both

of which were the result of the employer's unwillingness to change the claimant's current sales territory to a more sustainable sales territory. First, claimant was concerned that the employer's unwillingness to change his current sales territory would inevitably result in future disciplinary action and/or termination because the composition of claimant's sales territory prevented him from meeting the 65% annual sales threshold and because the employer had already verbally warned claimant of this potential disciplinary outcome. However, the preponderance of the evidence demonstrates that at the time claimant voluntarily left work he was not, then, facing any disciplinary action, nor did any disciplinary action appear to be imminent. Claimant failed to meet his burden in demonstrating that the possibility of future discipline and/or termination was a reason of sufficient gravity that claimant had no reasonable alternative but to leave work, or that a reasonable and prudent person of normal sensitivity, exercising ordinary common senses, would have left work.

Claimant's second basis for voluntarily leaving work was his concern that the employer's refusal to change his current sales territory would continue to reduce his income opportunities moving forward. While the employer did change claimant's sales territory in the first quarter of 2019 to the current, less-sustainable territory, and while the change contributed to reducing claimant's income from \$123,000 he in 2018 to \$105,000 in 2019 (as reflected on claimant's W-2's), the preponderance of the evidence fails to support the conclusion that claimant's financial concern was a reason of such gravity that he had no alternative but to leave work. Rather, the preponderance of the evidence supports the conclusion that claimant was able to sustain a reasonable income at the time of his departure, despite the challenges presented by his less-than-ideal sales territory. Under these circumstances, and without more, claimant derived no financial benefit from his decision to leave work and reduce his income to zero. Claimant did not show that he had good cause to quit work, and he is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 20-UI-145897 is affirmed.

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

**DATE of Service:** April 27, 2020

**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

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## 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 الاستئناف 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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