

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0455**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause, and was disqualified from receiving unemployment insurance benefits effective March 1, 2020 (decision # 172357). Claimant filed a timely request for hearing. On May 29, 2020, ALJ Snyder conducted a hearing interpreted in German, and on June 1, 2020, issued Order No. 20-UI-150498, affirming the Department's decision. On June 8, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant and the employer presented written argument in support of their respective positions. However, claimant and the employer did not declare 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). The arguments also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond parties' reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Mount Angel Sausage Company employed claimant as a general worker in its sausage department from April 2019 to February 27, 2020. The employer was a "small family company." Transcript at 21.

(2) The manager of the employer's sausage department was claimant's manager. That manager was the son of the employer's president, who rarely was on site. In December 2019, the manager, began to touch claimant in an offensive manner and make offensive statements to him while at work. The manager repeatedly touched or grabbed claimant's "bottom and...nipple" and called him a "sheep fucker," in front of coworkers. Transcript at 7. The manager's conduct embarrassed and offended claimant and caused him severe anxiety.

(3) After the employer's Christmas break, the manager's offensive conduct became more "extreme with name calling and especially calling [claimant] a sheep fucker." Transcript at 8. From that point forward,

claimant's working conditions "went downhill" and it became difficult for claimant "to be able to take any of it any longer." Transcript at 9. Claimant, who was from Germany, attempted to "stick it out longer" because he had a family with small children to support. Transcript at 9.

(4) At the end of January 2020, the employer's president took over the employer's operations because his son was absent from work due to substance abuse. The president took claimant aside and told him that his son was addicted to medication and for that reason would no longer be leading the company. Transcript at 8. Although claimant did not describe the manager's conduct toward him in detail, he told the president that the working environment with his son was "unbearable" and that "if things would continue the way they were going, [claimant] would put in his two weeks' notice." Transcript at 6, 9. However, three days after claimant's meeting with the president, the president's son returned to work as manager and over the next few weeks, his conduct toward claimant did not change.

(5) During the weekend of February 21 through 23, 2020, the employer was a vendor at a Mt. Angel festival. During the festival, the manager embarrassed claimant in front of a television crew. During the film session when the manager asked claimant a question, which claimant had difficulty understanding, he asked the manager to repeat the question several times. The manager then stated in front of the television crew, "Oh, this is my German. He's like a deer in the headlights," after which the leader of the film crew told claimant that "she would have never done that to [him]." Transcript at 16. During another night of the festival, claimant's manager drank heavily and fell asleep in a car. When he awoke the next morning, he treated claimant "like an animal." Transcript at 5. When a friend of the manager called claimant a "sheep," the manager made a gesture in front of others that suggested that claimant "should give [the manager] a blowjob." Transcript at 5.

(6) On February 26, 2010, claimant filed a complaint with the local police against the manager over his conduct toward him during the preceding months. When the police investigated, two individuals were interviewed and reported that they had seen the manager touch claimant's behind and call him a "sheep fucker." Transcript at 6.

(7) Claimant obtained treatment for his anxiety over the manager's conduct from a psychologist, who diagnosed claimant with Post Traumatic Stress Disorder (PTSD). Transcript at 7. Claimant concluded that he needed to quit to protect his mental and emotional health. Claimant did not seek a schedule change to avoid working with the manager because he knew that such a schedule change was "not possible" as the president's son was the only manager of the sausage department. Transcript at 10.

(8) On February 27, 2020, claimant quit work because the manager's offensive conduct had become "too much for [him] to bear psychologically." Transcript at 9.

**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.

As a preliminary matter, the employer's only witness, its president, and claimant disagreed regarding the conduct of the president's son as the manager toward claimant. The employer's witness denied that his son had acted toward claimant in the manner claimant described and that claimant was a "liar." Transcript at 19. However, the manager did not appear at hearing and claimant was the only firsthand witness that testified under oath regarding the conduct at issue. For that reason, claimant's testimony had more probative value than the employer's hearsay denials and where the evidence conflicted, facts were found in accordance with claimant's testimony.

Order No.20-UI-150498 concluded that claimant quit work without good cause, reasoning:

Claimant testified that he left work because he was being harassed by a coworker. Although this may have amounted to a grave situation, I am not persuaded that no reasonable person would have felt there was any alternative but to leave work...[C]laimant did not present any evidence that he had attempted to complain to the business owner or the manager about the issues he had with a coworker [or that] he had pursued any alternatives to leaving work, such as requesting an alternate schedule or...reporting the coworker's behavior.

However, the record does not support the order's conclusion.

Claimant's situation was grave. Claimant quit work because his manager's offensive and abusive behavior and sexual slurs toward him had become "too much for him to bear psychologically." Abusive working conditions can, under some circumstances, amount to good cause. *See McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the work from unemployment benefits"; the law "does not impose upon the employee the one-dimensional motivation of Adam Smith's 'economic man'"). Here, beginning in December 2019, the manager repeatedly touched or grabbed claimant's "bottom and...nipple" and called him a "sheep fucker," in front of coworkers which embarrassed and offended claimant and caused him severe anxiety. That conduct became more "extreme" over the next few months to the point where it became too difficult for claimant to handle. In February 2020, the manager embarrassed and offended claimant at least twice at a public festival. First, the manager embarrassed claimant in front of a film crew by calling him "my German" and describing him as a "deer in the headlights" after claimant had difficulty understanding the manager's question. Then, after a friend of the manager called claimant a "sheep," the manager made a gesture in front of others that suggested that claimant "should give [the manager] a blowjob." Claimant's anxiety over the manager's behavior toward him became so extreme that he sought treatment from a psychologist.

Claimant had no reasonable alternative to quitting. Although claimant may not have complained to the employer's president in detail about his son's conduct toward him in January when the president told claimant about his son's addiction problem, the president did not dispute that claimant had told him that if his son's "unbearable" behavior at work continued, he would quit. The president also told claimant at that time that his son's addiction issue was so serious that he would no longer have a leadership role

with the employer, but then returned him to his manager's role with their "small family company" just three days later. More likely than not, any detailed complaint to the president about his son's behavior likely would have been futile. The manager himself had to have known that his conduct was patently offensive and yet continued to behave toward claimant in an offensive manner through the February festival. More likely than not, any detailed complaint to the manager about his behavior likely also would have been futile. Shortly after the festival, claimant consulted with the psychologist, who diagnosed him with having with PTSD. At that point, claimant concluded that he needed to quit because the manager's offensive conduct had become "too much for [him] to bear psychologically" and did so on February 27, 2020. Viewing the record as a whole, claimant had no reasonable alternative but to quit when he did.

Claimant voluntarily quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

**DECISION:** Order No. 20-UI-150498 is set aside, as outlined above.

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

**DATE of Service:** July 16, 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 desisyon.

## 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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