

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1033

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92059). Claimant filed a timely request for hearing. On October 10, 2018, ALJ M. Davis conducted a hearing, and on October 12, 2018 issued Order No. 18-UI-118067, affirming the Department's decision. On November 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer and claimant submitted written arguments to EAB. In his written argument, claimant asserted that he did not have a fair hearing because the ALJ failed to call claimant's witness at hearing. When the ALJ asked claimant if the witness would present any information claimant had not already provided through his own testimony, claimant responded that the witness would not provide additional, new information. Audio Record at 15:57 to 16:21. Based on claimant's assertion, the ALJ did not call the witness. The ALJ's decision was correct. Claimant argues that his witness would have "collaborated" his testimony. *See Claimant's Written Argument.* However, where, as here, there was no reason to doubt claimant's credibility at hearing, it was not necessary to call a witness to corroborate claimant's testimony. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). We considered the parties' remaining arguments when reaching this decision.

FINDINGS OF FACT: (1) Marion County employed claimant from August 2006 until July 27, 2018 as a mental health associate.

(2) Before January 2018, some of claimant's associates complained to him regarding their supervisor, the clinical supervisor, who also supervised claimant. They told claimant they did not know how to complain to the employer about the supervisor. Claimant told them he would relay their complaints to the division director. In January 2018, claimant presented his coworkers' complaints about the clinical

supervisor to the employer's division director. The director told claimant that the employer was planning to demote the supervisor.

(3) In January 2018, the employer demoted the clinical supervisor to a nonsupervisory position as a mental health specialist. Claimant did not complain to the division director about how the former clinical supervisor treated him after the employer demoted her. The employer did not hire a replacement for the clinical supervisor position before claimant's employment ended. As a result, the program director became claimant's interim supervisor.

(4) After January 2018, during meetings with the former clinical supervisor and another coworker, claimant felt as though the former supervisor and coworker were "ganging up on" him because he would state his opinion regarding a client's treatment and the two coworkers would insist on other treatment techniques and ignore his opinion. Audio Record at 8:15 to 8:26. Claimant felt frustrated by the coworkers' behavior, in part because the coworkers were inexperienced and claimant had ten years of experience in the program. During one such meeting on June 28, 2018, claimant left the meeting before it ended.

(5) After claimant left the meeting on June 28, the program director asked to meet with claimant to discuss what occurred at the meeting. They met on June 29, 2018. The program director asked claimant to explain what happened during the meeting, and in response to claimant's account of his coworkers' conduct, told claimant that the coworkers' accounts of what occurred during the meetings did not show that they were "ganging up on" claimant and suggested that everyone "do what we can to get along." Audio Record at 8:40 to 8:48. The program director asked claimant for suggestions to improve the situation. Claimant suggested that the program director meet with claimant and the two coworkers who had attended the June 28 meeting to discuss claimant's concerns after claimant returned to work on July 16, 2018 from a preplanned vacation.

(6) Claimant began vacation on July 4, 2018 and returned to work on July 16, 2018. Claimant was absent from work due to illness on July 17.

(7) Claimant held group sessions with his clients. Before July 18, 2018, the former clinical supervisor called seven of claimant's clients and canceled his group session with those clients so that claimant could complete an appointment with one of the coworker's clients. The former clinical supervisor did not ask claimant's permission or tell claimant about the cancellation until claimant's clients failed to report for the group session. Claimant was also dissatisfied with the cancellation because of how it affected his clients' ability to meet their Psychiatric Security Review Board (PSRB) requirements.

(8) The meeting proposed by the program director did not occur before claimant gave notice to the employer on July 19, 2018 that he was resigning and his last day of work would be July 27, 2018. On July 27, 2018, claimant voluntarily left work because he was dissatisfied with how his coworkers treated him.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). 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 his employer for an additional period of time.

When claimant’s coworkers approached him with complaints about the clinical supervisor before January 2018, claimant complained to the employer’s division director about the clinical supervisor on their behalf. However, claimant testified that he did not complain to the division director after January 2018 about how the former clinical supervisor treated him personally because he thought it would be futile. Audio Record at 14:09 to 14:27. He supposed that the division director would respond that it was claimant’s “word against [the word of the coworker].” *Id.* However, the record does not show by a preponderance of the evidence that complaining to the division director would have been futile. On the contrary, claimant showed by complaining to the division director on behalf of his coworkers in January 2018 that he did not believe doing so would be futile. Moreover, although the record does not show that claimant’s act of complaining to the division director in January prompted the employer to demote the clinical supervisor, we infer that the division director addressed the coworkers’ complaints because the record does not show that claimant’s coworkers continued to complain to claimant about the former clinical director. Claimant faced a serious situation at work, but the record does not show that his coworkers’ treatment of him created a situation of such gravity that no reasonable and prudent person would have continued to work for his employer for an additional period of time rather than pursue the reasonable alternative of complaining to the division director about his coworkers’ treatment of him.

Nor were claimant’s circumstances so grave that no reasonable and prudent person would have continued to work for his employer for an additional period of time rather than meet with the coworkers who claimant felt mistreated him, with the program director as a moderator. The record shows that the meeting did not occur before claimant gave notice to resign because of claimant’s schedule, and not due to the employer’s failure to address his complaints, and for the reasons previously identified the record does not show such a meeting would have been futile. Because claimant quit work without giving the employer the opportunity to meaningfully address his concerns, and, potentially, to resolve them, and he did not show that giving that opportunity to the employer would be futile or was likely to worsen his working conditions in any legally significant manner, he did not establish that his working conditions were so grave that he had no reasonable alternative but to quit work because of them.

Claimant quit work without good cause. He is therefore disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Order No. 18-UI-118067 is affirmed.

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

DATE of Service: December 4, 2018

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. 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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.

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