

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1088

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 113736). Claimant filed a timely request for hearing. On October 30, 2018, ALJ M. Davis conducted a hearing, and on November 2, 2018 issued Order No. 18-UI-119102, affirming the Department's decision. On November 19, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Fred Meyer Stores Inc. employed claimant as a customer service cashier from September 1, 2010 until July 25, 2018.

(2) The employer expected employees to notify the store manager or the person-in-charge (PIC) before the scheduled start of a shift if they were going to be absent. Claimant understood the employer's expectation.

(3) On May 8, 2018, claimant was absent for a scheduled shift and failed to notify the manager or PIC of the absence. Sometime after, the employer issued a warning to claimant for not providing notice of her absence on May 8, 2018. At a meeting to discuss the warning, the employer's human resources assistant store manager told claimant that if she was absent in the future and did not notify the manager or PIC she could be discharged.

(4) On Sunday, July 22, 2018, claimant, who was pregnant, fainted during church services. That day, claimant went to a hospital emergency department for an evaluation of her condition. The physician who saw claimant recommended that she not work during the upcoming week. The physician gave claimant a note excusing her from work. At that time, claimant was scheduled to work Tuesday, July 24, 2018 through Saturday, July 28, 2018 and on Monday, July 30, 2018.

(5) On Sunday, July 22, claimant called the employer and notified an employer representative that she would not be able to work during the upcoming week. The representative told claimant that she needed to come to work and cover her shifts.

(6) On Tuesday, July 24, 2018, claimant reported for and worked her scheduled shift. After the shift, claimant tried to give the PIC the note from the physician excusing her from work during that week, but the PIC was busy and her hands were full carrying cash register tills. Claimant left the physician's note at the customer service desk where she thought the employer would receive it.

(7) On Wednesday, July 25, 2018, claimant did not report for work and did not notify the employer that she was going to be absent. That day, the store assistant manager tried to contact claimant about her absence, but claimant's phone number was not working. The assistant manager then contacted claimant's mother in an attempt to reach claimant. The assistant manager told claimant's mother that the employer had not heard from claimant, did not know why claimant had been absent from work that day, had considered her absence to be a no call/no show and asked if claimant would call the employer. Audio at ~12:45. That night, claimant's mother went to claimant's residence and relayed to claimant the information she had received from the assistant manager. Claimant was "confused" about why the employer would have considered her a no call/no show that day because she had dropped off the physician's note excusing her absence at the customer service desk. Audio at ~18:10. After speaking with claimant, the mother called the assistant manager and told the manager that she had spoken with claimant and that claimant had not had transportation to work on July 25. Claimant did not try to contact the employer after July 25 to explain why she had been absent, to inquire whether the employer had received the physician's note or to clarify if the employer had meant to discharge her by the comments the assistant manager made to her mother on July 25.

(8) On July 26, 27, 28 and 30, 2918, claimant did not report for work or notify the employer that she was going to be absent. On July 30, the employer formally processed claimant's work separation due to job abandonment. Until that day, the employer was willing to continue the work relationship.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause

The employer appeared to contend that claimant's failure to report for work after July 24 was an expression of her unwillingness to continue working for the employer, and that claimant's work separation was a voluntary leaving by job abandonment. Audio at ~5:18. In contrast, claimant contended that she thought the assistant manager's comment to her mother that the employer considered her absence on July 25 to be a no call/no show meant that the employer had discharged her as of that day. Audio at ~13:16.

The account that claimant gave of the substance of the assistant manager's July 25 call as relayed to her by her mother, including that the employer did not know why claimant had been absent that day and asking the mother to tell claimant to contact the employer, most reasonably suggests that the employer had not seen the physician's note excusing claimant's absence and that the employer had not as of that time decided to discharge claimant, but wanted additional information. By claimant's own account, the information that her mother had passed on to her was, at best, ambiguous as to the employer's intentions about the employment relationship. However, claimant's failure to contact the employer after claimant's mother told the assistant manager that she had made claimant aware of the assistant manager's July 25

call was most reasonably construed by the employer as an unequivocal, objective manifestation of claimant's unwillingness to continue working for it. On this record, claimant was the first party to clearly evidence an intention to sever the work relationship. Claimant's work separation was a voluntary leaving on July 25, 2018, the date after which she chose not to continue working for the employer.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant left work when she did for the stated reason that she thought the employer had discharged her by a comment the assistant manager made to her mother on July 25. However, claimant testified that she was "confused" as to why the assistant manager would have made the comment if the manager knew of the note from claimant's physician. Audio at ~18:10. Moreover, as discussed above, the assistant manager's statement that was relayed to claimant by her mother neither unmistakably nor unequivocally demonstrated the employer's intention to end its work relationship with claimant. As such, a reasonable and prudent person in claimant's circumstances would have sought clarification from the employer as to its intentions, if it had received the physician's note and if it was discharging her before ceasing to report for work. Because claimant had this reasonable alternative to leaving work, she did not show good cause for doing so.

Claimant did not show that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-119102 is affirmed.

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

DATE of Service: December 20, 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 محكمة 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.

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