

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1117

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer with good cause (decision # 112145). The employer filed a timely request for hearing. On November 19, 2018, ALJ Murdock conducted a hearing, and on November 27, 2018 issued Order No. 18-UI-120279, concluding that claimant had good cause to voluntarily leave work. On December 3, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Ford Cleaners employed claimant from June 27, 2017 until October 2, 2018, last as a store manager.

(2) On October 2, 2018, the owner spoke with claimant about a mistake that one of the store employees who worked under her had recently made. Claimant responded that she should not be blamed because she had not been at work when the mistake happened. The owner told claimant that as a manager he expected her to oversee the performance of employees and to take steps to reduce the errors that occurred in her absence. The owner then left the store to drive a route. During the interaction, the owner did not call claimant unflattering names, yell at her or grab her.

(3) Shortly after the owner left the store on October 2, 2018, claimant dropped off a note for the owner stating that she had gone home because she was sick. Claimant then departed the workplace. Thereafter, claimant did not again report for work and there was no contact between claimant and the employer until claimant picked up her final check some days later. On October 2, 2018, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

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 generally contended that she left work due to a “hostile work environment”. Audio at ~9:20. Claimant alleged that left work on the day that she did specifically because during the interaction with the owner on October 2, the owner grabbed her arm in anger and repeatedly “yelled” at her in that interaction. Audio at ~10:36. Claimant further contended that the owner frequently called her and other employees unflattering names at work, such as “idiots,” “retards” and a “zoo of monkeys,” and that the owner would inappropriately “grab” at them in an unwelcome fashion or try to “kiss[]” them on their cheeks. Audio at ~12:48, ~13:56. The owner specifically denied that he yelled or grabbed at claimant during the October 2 interaction and generally denied that he ever engaged in workplace name-calling, yelling or inappropriate or rough touching or grabbing. Audio at ~23:18. ~24:21, ~25:12, ~26:00. Claimant’s and the owner’s accounts of what happened in the October 2 interaction were diametrically opposed, as were their accounts of the owner’s general behavior in the workplace.

The employer called five employees other than the owner to give testimony about their observations of the owner’s behavior in the workplace since none of them appeared to have witnessed the October 2 interaction between claimant and the owner. Of the employee-witnesses, two were long time employees having five and ten years’ experience respectively; one had over a year of experience; and two had less than six months of experience. The tenures of the long-term employee-witnesses would appear to have allowed them to observe the owner over a sufficient time to reasonably rule out impressions based on behavioral aberrations. In addition, the employee-witnesses worked in an array of different positions, presumably allowing them to observe the owner when subjected to a variety of stressors. Of the employees, all five of them emphatically agreed that the owner did not engage in the type of workplace name calling that claimant had described, although one of them indicated that she sometimes heard employees complain about how the owner critiqued their performance and that he was sometimes thought to be “ornery or cranky” or “grumpy.” Audio at ~35:07, ~39:30, ~40:24, ~43:04, ~43:23, ~46:04. All the employee-witnesses agreed that the owner did not yell at employees in the workplace, although one of them testified that on occasion he might “raise his voice,” and another stated that frustration sometimes was apparent in his voice. Audio at ~40:35, ~40:48, ~43:14, ~46:27, ~49:20. The employee-witnesses also concurred that the owner did not grab employees or inappropriately or roughly touch them, and they had not heard other employees complain about the owner having done so. Audio at ~35:21, ~35:33, ~44:00, ~46:34~49:46. Viewed in sum, the testimony of the employee-witness did not indicate that the behavior of the owner was abusive, offensive or abnormally harsh.

The testimony of the employee-witnesses appeared consistent sincere, straightforward, comprehensive in account and even-handed. There was no reason discernable in this record to doubt or discount the credibility of the employee-witnesses or the accuracy of the accounts they gave. Because the account of the owner and claimant about the owner’s behavior on October 2 and in general in the workplace was so divergent, the party whose testimony was corroborated by that of the employee-witnesses is entitled to greater weight than that of the non-corroborated party. As such, claimant did show that the behavior of the owner on October 2 or at other times in the workplace was offensive, inappropriate or abusive and

that it constituted a grave circumstance. Claimant did not meet her burden to show by a preponderance of the evidence that she had good cause to leave work when she did.

Because claimant did not demonstrate that she had good cause to leave work, she is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-120279 is affirmed.

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

DATE of Service: January 2, 2019

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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