

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1145

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141740). Claimant filed a timely request for hearing. On November 29, 2018, ALJ F. Scott conducted a hearing, and on December 3, 2018, issued Order No. 18-UI-120621, affirming the Department's decision. On December 11, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Rose Haven CIC employed claimant from May 1, 2014 to August 29, 2018, last as an operations manager in the employer's day shelter for women and children experiencing homelessness.

(2) Beginning in 2016, claimant became increasingly dissatisfied with the manner in which the executive director communicated with her and other staff. The executive director was claimant's immediate supervisor. At times, claimant felt that the director would yell "like a child." Transcript at 16. Claimant also felt that the director "micromanaged" claimant's work, and "belittled or embarrassed" claimant, causing claimant to take breaks or leave work "in tears." Transcript at 16-17. Claimant did not discuss how the director treated her with the director. The employer did not have a human resources employee.

(3) Claimant had chronic bronchitis and, in early 2017, claimant also sought medical care for high blood pressure, stomach problems and a "racing heart" due to work stress. Transcript at 18. Claimant did not inform the employer that she attributed some of her health challenges to her working conditions.

(4) In early May 2018, the employer's board chair asked claimant for input for the executive director's performance review. Claimant told the board chair that she preferred to speak with the board chair personally rather than complete a form, and the board chair met with claimant privately on April 28, 2018. Claimant told the board chair that the director mistreated employees and created a tense

environment by yelling and being rude and “curt” to claimant and other staff and volunteers. Transcript at 6. Claimant told the board chair that the director “encouraged” staff to report to work when they were sick and made statements about having to close the shelter if staff left work due to illness. Transcript at 6. Claimant provided a short, written summary of her review, with the understanding that the board would keep it confidential.

(5) In mid-May 2018, the board chair compiled the input it had received from staff, including claimant, regarding the executive director. The board gave the director her evaluation. The evaluation stated that the director needed to improve her communication with some staff members, but did not include complaints that the director “micromanaged” staff. Transcript at 26-27. The evaluation did not identify who had provided specific feedback for the evaluation. On May 15, 2018, the director sent an email to all staff stating that she “understood her communication need[ed] improvement and [took] the feedback [from the staff] seriously [and would] strive to do [a] better job.” Exhibit 1 at 10. The director also stated that she did not expect staff to report to work when sick.

(6) Claimant did not consider the executive director’s communication to staff to have improved after her performance evaluation in May 2018. At the end of July 2018, claimant considered the director’s reaction to an incident regarding lettuce to be an overreaction.

(7) On August 6, 2018, claimant met with the executive director and told her that she would be resigning. Claimant never complained to the director about how the director treated her.

(8) On August 13, 2018, claimant gave the employer notice that she planned to quit work on November 30, 2018 and that she would reduce her work schedule to 32 hours per week, Monday through Thursday, on October 1, 2018. Claimant gave notice to quit because she was dissatisfied with how the director treated her.

(9) On August 27, 2018, claimant received a memorandum from the executive director stating that the employer would continue claimant’s employment for two weeks after the employer hired claimant’s replacement. Exhibit 1 at 4. Claimant was upset that the director did not state that the employer would allow claimant to work until November 30.

(10) On August 28, 2018, the executive director sent claimant an email stating that she learned that the August 27 memorandum had upset claimant, and that the employer would try to make claimant’s last day of work November 30. Exhibit 1 at 8. The email also offered to pay claimant two weeks’ pay if she chose to end her employment on August 29, but “[t]his is not what we wish for – but if you wish to resign now, of course you are free to do so.” Exhibit 1 at 8.

(11) On August 29, 2018, claimant sent the executive director an email stating that she quit work because she was dissatisfied that the employer would employ her for only two weeks after it hired claimant’s replacement. The employer had not yet hired a replacement for claimant as of August 29, 2018.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that 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 P2d 722 (2010). Claimant had chronic bronchitis, high blood pressure, and an unspecified stomach condition, which may be considered permanent or long-term “physical impairments” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

At hearing, claimant testified that she initially gave notice to quit on November 30, 2018 because she was dissatisfied with her working environment because of how her executive director treated her. Specifically, claimant disliked that the director yelled, “micromanaged” claimant’s work, and at times, made claimant feel belittled or embarrassed. Dissatisfaction with one’s working environment can, under some circumstances, amount to a “hostile working environment” and good cause to leave work. *See, McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants are not required to “sacrifice all other than economic objectives and . . . endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”).

To the extent that claimant felt that the director “micromanaged” her, the record does not show that the director’s conduct was unreasonable or overly invasive. Claimant also testified that the director would sometimes yell in an inappropriate, excessive way (“like a child”), about trivial matters like lettuce, and that she pressured employees to work when sick. The record does not show that the director called claimant names, used foul language toward claimant or at all, or threatened claimant. However, based on the director’s May 2018 evaluation, she apparently needed to improve her communication with some employees, including about time off work due to illness. However, even though claimant felt the director’s conduct did not improve after her evaluation, the director’s conduct was not sufficiently serious to create a work environment that was so “oppressive” that claimant did not have the reasonable alternative of complaining about the director’s conduct again before she quit. Nor did claimant show that the impact of her work environment created a grave situation for claimant due to her health.

The executive director had expressly committed to improving her communication with staff, and claimant had the reasonable alternative of addressing that issue with the director, rather than quitting when she did. Claimant asserted at hearing that she feared retaliation (Transcript at 38), but did not show that she or other staff faced any adverse consequences for complaining about the director in the past. Claimant also had the reasonable alternative of complaining again to the board chair. Claimant felt comfortable speaking openly with the board chair in May 2018, and because the board chair addressed claimant’s complaints at that time, the record does not show that it would have been futile for claimant to complain to the board chair again rather than quit when she did. Thus, to the extent claimant quit due to how the executive director treated her, she did not quit work for good cause.

Nor did claimant show she had good cause to quit work on August 29, rather than waiting for the employer to hire a new operations manager, and working two additional weeks. The record does not

show that the employer was under any obligation, contractual or otherwise, to guarantee claimant's employment until the date of claimant's choice. Even so, the director clarified in an email to claimant on August 28, 2018, that the employer would attempt to have claimant work until November 30, and that it did not want claimant to end her employment immediately. The record does not establish that the employer's unwillingness to guarantee that claimant would work until November 30 created a grave situation such that no reasonable person with claimant's health conditions would have continued to work for the employer after August 29.

For the foregoing reasons, claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-120621 is affirmed.

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

DATE of Service: January 8, 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 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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