

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1146

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits effective July 1, 2018 (decision # 72224). Claimant filed a timely request for hearing. On November 16, 2018, ALJ S. Lee conducted a hearing, and on November 19, 2018 issued Order No. 18-UI-119985, concluding that claimant voluntarily left work without good cause, but modifying decision # 72224 to establish July 22, 2018 as the effective date of the disqualification. On December 7, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Maximus Barber Shops, LLC employed claimant as a hair stylist from sometime in January 2018 until July 24, 2018.

(2) On July 2, 2018, claimant was scheduled to begin work at 2:00 p.m., but arrived late. The owner, who also worked as a hair stylist, confronted claimant about her tardiness in the presence of two clients who were in the waiting area. The exchange between claimant and the owner became heated. The owner told claimant to leave work and go home for the day. Claimant gave her work keys to the owner and left. The owner did not intend to discharge claimant by sending her home that day.

(3) Around July 3, 2018, the owner sent a message to claimant on Facebook asking claimant where some hairstyling tools were located. Claimant thought the owner was suggesting that she had taken the tools and sent a message to the owner stating that she had not taken the tools and did not know where they were. Around that time, the owner blocked claimant from sending messages to her on Facebook. On about July 4, 2018, the owner unblocked claimant from the owner's Facebook account and sent a message to claimant stating that she had located the tools and apologizing for her previous message about the tools.

(4) Sometime before July 8, 2017, the owner contacted claimant and asked her if she would work on the morning of July 8. Claimant informed the owner that she could not work that morning because she had

an important appointment scheduled for her daughter. The owner responded to claimant that she would make other arrangements. At the time, it was the owner's understanding that claimant's family circumstances were difficult. The owner told claimant that, "since [she] was having such a rough month, to take the whole month [of July] off." Audio at ~16:23. The owner understood that claimant was going to take that time off.

(5) On July 11, 2018, the owner sent a message to claimant inquiring if she wanted to pick up her current paycheck or if she wanted it mailed to her. Claimant obtained that paycheck.

(6) Sometime between July 20 and 23, 2018, claimant contacted a former employer and asked if the former employer would re-hire her. The former employer was willing to take claimant back, but did not have any hours available at that time and could not schedule claimant for work until an employee quit.

(7) On July 24, 2018, the owner contacted claimant about returning to work. In that contact, the owner told claimant that a new stylist that just started work had told the owner that the employer's clients "hated" claimant and were "complaining" about her, but she did not know whether the newly hired stylist was relaying accurate information to her. Audio at ~17:06, ~18:35. Claimant responded, "[I]t's a good thing I don't work for you no more because I don't want to lose you any business." Audio at ~17:19. At that time, the employer had continuing work available for claimant.

(8) As of July 24, claimant had decided not to return to work for the employer because there was "too much drama" and she thought there would be fewer problems with her former employer. Audio at ~26:45. By her July 24 interaction with the owner, claimant voluntarily left work. Claimant began working for her former employer in mid-September 2018.

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

The first issue this case presents is the nature of claimant's work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (January 11, 2018). If the employee is willing to continue to work for the same employer for an additional period of time, but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

It was not disputed that the owner sent claimant home on July 2 and as of around July 3 and continuing until sometime on approximately July 4, the owner blocked claimant from sending messages to her through Facebook. Although under certain circumstances an employer sending an employee home and then unilaterally blocking that employee from customary channels of communication might suggest that the employer was not willing to continue the work relationship with the employee, the circumstances in this case indicate otherwise. Here, neither party testified that the owner communicated words that reasonably indicated an intention to discharge claimant when she sent claimant home on July 2. In addition, the owner blocked communications from claimant only briefly based on a misunderstanding, after which the owner promptly apologized to claimant for blocking her messages and for suggesting that claimant had taken property of the employer. Claimant did not suggest that she thought the employer had discharged her or that the employer was unwilling to allow her to continue working at any time before she told the owner she was not going to return to work. After the employer unblocked communications from claimant, claimant and the owner discussed claimant's return to work on two

subsequent occasions, which indicated that neither party construed the employer's act of sending claimant home or the very short-lived interruption of messaging on Facebook as severing the work relationship. On this record, claimant's work separation was a voluntary leaving on July 24, 2018, when claimant first expressed that she was not going to return to work after her time off.

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 testified that she decided to leave work because she thought there was excessive drama in the employer's workplace and she thought she liked the emotional tone of her former employer's workplace better. Audio at ~26:45. The principal occurrences of "drama" in the employer's workplace, as described in claimant's testimony, were the heated exchange between claimant and the owner on July 2 and the July 3 message from the owner, which claimant interpreted as an accusation of theft. As regards the July 2 exchange, while it likely was not pleasant for claimant to be rebuked in front of two clients, claimant did not testify to any detail from which it objectively could be inferred that the interaction, viewed alone or in combination with prior interactions, involved mistreatment, was abusive or created an oppressive work environment. The July 3 message did not accuse claimant outright of theft, and the owner apologized only one day later for thinking that claimant had might have taken the employer's property. A reasonable and prudent person of normal sensitivity would not have viewed the incidents of drama that claimant described in the employer's workplace as objectively grave reasons to leave work.

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-119985 is affirmed.

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

DATE of Service: January 4, 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.

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