

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0007

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143507). Claimant filed a timely request for hearing. On November 30, 2018, ALJ Shoemake conducted a hearing, and on December 11, 2018 issued Order No. 18-UI-121018, affirming the Department's decision. On December 31, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but did not certify that she provided a copy of that argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider claimant's argument or her new information when reaching this decision.

FINDINGS OF FACT: (1) R R Donnelley – Sons Company employed claimant as a photo stylist from April 13, 2010 until April 20, 2018. Claimant arranged garments in photographs that were taken for the employer's clients.

(2) Although claimant was never told that the employer did not want her to continuing working for it, she had believed for many years that the employer wanted to force her into quitting work. In particular, claimant thought that the account manager steered work away from her to other stylists whom the account manager and studio manager favored.

(3) During her employment, claimant had earned as much as approximately \$55,000 a year. However, claimant's earnings had declined, and in 2018 she would have earnings of approximately \$7,000.

(4) In approximately 2013, when claimant was introduced as a "stylist extraordinaire" to an art director, claimant perceived that the art director made a "silent gasp to herself." Transcript at 10. Claimant had

recently turned 60 and thought the art director did not want to work with her because of her age. Also in 2013, a coworker told claimant that the coworker had overheard a manager state about claimant, “She’s too old for the job.” Transcript at 16. The coworker did not identify the manager who had made the ageist statement about claimant. At that time, claimant did not bring up concerns about ageism to the employer.

(5) In preparation for deciding which stylist would be assigned to a particular photo shoot, the employer usually had at least a few stylists arrange garments for test photographs. The stylist’s speed in arranging the garments was evaluated as well as whether the stylist had executed the “look” that the client desired. Transcript at 33. On many occasions, including in the fall of 2018, claimant felt that her performance on the speed part of the evaluation was unfairly scored because she had to arrange five garments per photograph, which she believed was more than other stylists. As a result, claimant thought she was not assigned to some jobs. Claimant thought this was an example of the account manager trying to induce her to quit work.

(6) Claimant believed that the account manager was not assigning her to be the stylist on certain photo shoots when clients had specifically requested her. Claimant brought up her concerns with the account manager. The account manager denied disregarding client requests to assign claimant to photo shoots. Claimant thought the account manager was lying and had a “personal agenda” against her. Transcript at 8, 30.

(7) In February 2018, claimant sent an email to the then-studio manager informing him that she felt she had been the subject of age discrimination in 2013. The studio manager referred the matter to the employer’s human resources department.

(8) In late February 2018, a human resources representative contacted claimant about her report of ageism. At that time, claimant also expressed concerns about the speed test and her belief that she was being pushed out. The human resources representative investigated claimant’s concern about age discrimination and learned that the employee who had told claimant about the ageist comment in 2013 no longer worked for the employer. The identity of the manager who was overheard making the allegedly ageist statement could not be determined. As a result, the human resources department was unable to investigate further claimant’s concern that, five years earlier, she had been discriminated against because of her age.

(9) In February or March 2018, claimant sent an email to the studio manager informing her that she felt “blacklisted” by the account manager, that she had not been assigned to a photo shoot when the client had specifically requested her, and that the account manager had “blatantly lied” to her about doing that. Transcript at 26. These concerns were forwarded to the employer’s human resources department, which investigated them. The representative contacted the studio manager and the account manager about claimant’s concerns. Those managers told the representative that, with respect to the photo shoot on which claimant was given the speed test, they had discussed claimant’s result with the client and the decision to assign a stylist other than claimant had been made due to business needs and not the results on the speed test. The representative informed claimant of the result of her investigation.

(10) Sometime around April 19, 2018, claimant was assigned to a photo shoot with many garments and garment styles. Given the number of garments and styles, claimant believed that someone should have

been assigned to assist her. However, claimant was told that the account manager wanted her to do all the styling by herself. Because the account manager had not booked claimant for the number of days that she thought was needed to complete the assigned work, claimant thought the account manager wanted her to fail. Claimant decided to quit work

(11) On April 20, 2018, claimant told the account manager that she was quitting 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). If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with the return to full time work or the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). 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.

Although claimant was obviously displeased and upset about incidents that occurred during her employment, her descriptions of those incidents did not show that they were grave. With respect to claimant’s belief that she was the subject of an ageist comment in 2013, she did not report it to the employer for five years, until 2018. Had claimant believed that she was actually being discriminated against based on her age, either in 2013 or at any time after, she likely would have reported that discrimination to the employer far more quickly than she did. In addition, when claimant very belatedly reported her concerns over ageism to the studio manager, that manager promptly contacted the human resources department to investigate.

With respect to the extent to which claimant’s compensation decreased during her employment, claimant did not contend that her rate of pay was reduced so it is inferable that the decrease was due to working reduced hours. Claimant did not contend or suggest that the reduction in hours was the result of age discrimination or indirectly related to it. Indeed, it was not clear to what claimant attributed the decrease in her income. Claimant also did not present evidence showing, or from which it reasonably could be inferred, that because of the reduction in hours the cost to her of working exceeded that remuneration she received from working. Nor did claimant show that continuing to work for the employer at reduced hours substantially interfered with her return to full-time work. Claimant therefore failed to establish that the reduction in hours was good cause for her to leave work.

With respect to claimant’s other complaints, claimant did not rebut the employer’s testimony that, when the employer evaluated stylists for purposes of determining whether they would be assigned to a particular photo shoot, their performance on the speed test was only one factor that was considered. Transcript at 34. The employer’s witness also testified that the standard for all stylists who were evaluated for photo shoots was that they had to arrange three to five garments per test shot, so that claimant having to arrange five garments on one shoot was not out of the norm, and other stylists would have had to arrange a similar number. Transcript at 42. Finally, while claimant may have sincerely

believed the account manager and the studio manager were trying to force her into quitting by not assigning her to work with a particular client, and lied to her about the client not having requested that she work on particular shoots, claimant failed to show that she was not assigned to work for the particular client for other than legitimate business reasons, or that the one or both managers lied to her. On this record, claimant failed to establish that the behavior of the account manager or the studio manager in assigning work was an objectively grave circumstance for which a reasonable and prudent person would have left work when claimant did.

Claimant failed to establish good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-121018 is affirmed.

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

DATE of Service: February 6, 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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