

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0023

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114140). Claimant filed a timely request for hearing. On December 6, 2018, ALJ Shoemake conducted a hearing, and on December 13, 2018, issued Order No. 18-UI-121213, affirming the Department's decision. On January 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant presented written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. The employer offered written argument in response to claimant's application for review. The employer's argument also contained information that was not part of the hearing record and failed to show that the new information was relevant and material to EAB's determination concerning the issue before it. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and the parties' arguments, to the extent they were based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Micro Enterprise Services of Oregon (MESO) employed claimant, last as a business development specialist, from July 1, 2013 to September 26, 2018.

(2) From 2014 to the end of her employment in 2018 claimant believed that her work environment was becoming increasingly "toxic." Transcript at 45. Claimant initially worked for the employer in its Beaverton office as a project coordinator, which included providing counseling services to the employer's small business clients. At one point the employer's executive director (NS) rented out space in the Beaverton office to her daughter (MS). MS was hearing impaired and had a service dog who was allowed to move about the Beaverton office. MS also utilized a "white noise" device which sometimes interfered with claimant's efforts to provide counseling services to her clients. She also believed MS had become abrasive and harassing toward claimant whenever claimant complained to her.

(3) Claimant complained to NS about her daughter. NS attempted to mediate the problem between claimant and MS by using a subordinate, with limited success. When claimant requested a transfer to another office to both leave that environment and facilitate the resolution of some domestic issues, NS accommodated her. Claimant soon complained about the manager at that office, who claimant believed made unreasonable demands of her. With claimant's consent, NS then transferred claimant to a third office in Portland. Claimant soon had concerns about the management at that office. Although all of these issues caused claimant significant stress and anxiety, she never sought medical treatment or counseling.

(4) In July 2018, claimant was off work for two weeks. When she returned to the Portland office, she worked approximately one week before requesting and receiving an additional week off to spend time with her children. She then returned to work for approximately three weeks before requesting and being granted a 30 day leave of absence from September 11 to October 11, 2018 to address some personal issues.

(5) During her leave of absence, claimant requested a meeting with NS to discuss the concerns she had with her work environment. NS agreed to the meeting because she wanted to determine claimant's intentions regarding work following the end of her leave. On September 26, 2018, claimant, NS, and another manager (FWT) attended a meeting. During the meeting claimant perceived that FWT became verbally aggressive towards her for not being sufficiently supportive of NS. After the meeting, claimant returned home and drafted a resignation notice, effective that day, which she sent that to both NS and the employer's board of directors. Claimant resigned because she believed, following that meeting, that the work environment had become too toxic and beyond repair for her to return.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

Claimant had a variety of apparently sincere and factually grounded concerns about the manner in which the employer was managing claimant's work environment. However, it appears from the record that the employer was responsive to claimant whenever she voiced her concerns and attempted to resolve her concerns through mediation or transfer. Under those circumstances, claimant's concerns about a "toxic" work environment did not amount to a situation of such gravity that she had no reasonable alternative but to quit work over them.

The final incident that caused claimant to quit work when she did occurred on September 26, 2018, when claimant alleged that FWT acted in a threatening and verbally aggressive manner toward her for

not expressing sufficient support for NS. Claimant alleged that NS had asked claimant if she had made certain statements to other staff members about the employer or work environment which claimant denied. Transcript at 8-9. Claimant asserted that FWT then became angry at claimant for not expressing sufficient support for NS, stood over claimant in a hostile manner shaking her fists and then stating that she would fight people for the executive director if that was required. *Id.* Conversely, NS testified that FWT had been asked to attend the meeting as an observer only and denied that FWT had been physically or verbally aggressive towards claimant during that meeting. Transcript at 38-39.

The record therefore consists of the testimony of two witnesses, each of whom testified sincerely and plausibly to opposing versions of the same event, leaving the evidence no more than equally balanced on that issue. Where the evidence is equally balanced, the party with the burden of persuasion – here the claimant – has failed to meet her burden. We therefore conclude that claimant has failed to establish that she was subjected to the hostile, intimidating or threatening behaviors that she described occurred during the September 26, 2018 meeting and, because claimant immediately quit work after that meeting, failed to show that she quit work with good cause. Claimant is disqualified from receiving unemployment insurance benefits based on her work separation until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 18-UI-121213 is affirmed.

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

DATE of Service: February 1, 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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