

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0027

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80406). Claimant filed a timely request for hearing. On December 14, 2018, ALJ Murdock conducted a hearing, and on December 18, 2018 issued Order No. 18-UI-121465, affirming the Department's decision. On January 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. However, the 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 as required by OAR 471-041-0090 (October 29, 2006). For this reason, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) O'Reilly Auto Parts employed claimant as a store manager from May 6, 2014 to October 24, 2018.

(2) The employer had various written policies in place that were designed to protect against the loss or theft of property or funds. For example, managers on duty were not to leave the store when to do so would allow an unauthorized employee to be left alone in the store. Managers on duty were not to leave money anywhere but in the safe when not present in the store. Whenever cash from sales reached \$200, the store manager on duty was expected to go to the bank and deposit the funds. Claimant was aware of the employer's policies but when she replaced the prior manager, she was told by him that following many of the cash handling policies in question was "not something we do" or "enforced" due to the location of the store, which typically left the employer short-handed. Audio Record ~ 30:00 to 32:00. Consequently, claimant did not follow many of the employer's cash handling policies or enforce them with her subordinates.

(3) In November of 2017, claimant inadvertently misplaced checks and cash she was to deposit and the entire deposit ended up missing. When the matter was investigated, it was learned that most of the missing funds were in the form of a check from a single customer, which the employer was able to stop payment on and have replaced, resulting in little loss of funds. However, claimant was reprimanded for carelessness in her handling of the funds.

(4) On October 18, 2018, during the night shift, claimant was not on duty but an authorized assistant was managing the store along with one other employee who was not authorized to be left alone in the store. The authorized assistant was about to close the store but could not locate his keys. He contacted claimant, who lived more than 45 minutes away, and authorized him to briefly leave the store and search for the keys at his home, leaving the other employee alone in the store. Before briefly leaving the store, the assistant manager lost track of a cash bag with more than \$1000 in it. When he returned with his keys, he locked up the store and left without remembering, finding or securing the funds in question.

(5) The following morning, claimant reported for her shift, counted all of the deposit bags in the safe from the previous day and prepared to deposit them all in the local bank. However, when she viewed the sales information from the previous day on computer, she realized that over \$1000 was missing from the deposits. She contacted the manager on duty from the previous evening, and he could not find the missing funds or remember where he had put them. Claimant eventually contacted the employer, and its loss prevention staff interviewed claimant and the two coworkers that were on duty on October 18, 2018.

(6) During their interviews, the two coworkers denied taking the funds. During claimant's interview on October 24, 2018, attended by both the loss prevention manager and district manager, claimant also denied taking the funds. However, the loss prevention manager told claimant that given her previous incident and because no one had confessed to the theft of money, that she would be held accountable for not enforcing the employer's cash handling and related policies that contributed to the loss of funds. He went on to say that it was "not looking good for her," but if she resigned, she would preserve her reputation because when she applied to potential employers there would be no termination on her record. Audio Record ~ 4:45 to 10:00. He added that a termination would follow her and if she wanted to move forward without a termination on her record, there was "only one route to go." Audio Record ~ 21:45 to 24:30. Finally, he told her that with an immediate voluntary resignation there would be an assurance from the employer that a separation report "would just say parted ways and nothing else would be there." Audio Record ~ 26:00 to 26:50. The loss prevention manager told claimant what to write concerning her resignation.

(7) Claimant contacted her husband in tears and discussed the matter with him. Claimant was concerned that she would have difficulty finding other work as a store manager in her field if the employer discharged her and made the reason for the discharge available to potential employers. Claimant then returned to the interview and composed her resignation notice in accordance with the instructions of the loss prevention manager. Claimant wrote,

As of October 24, 2018 I resign from Oreilly Auto Parts effective immediately.

[s] Jami Weaver
10/24/18

Exhibit 1.

(8) On October 24, 2018, claimant resigned to avoid a discharge and to preserve her reputation and ability to find other similar work.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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 his employer for an additional period of time. Leaving work without good cause includes a resignation to avoid what would otherwise be a discharge for misconduct or a potential discharge for misconduct. OAR 471-030-0038(5)(b)(F).

In Order No. 18-UI-121465, the ALJ concluded claimant voluntarily left work without good cause, reasoning:

Claimant voluntarily left work to avoid a discharge or potential discharge for misconduct and protect her reputation. Given that claimant held some of the responsibility in the loss of over \$1,000 in funds due to her failure to enforce procedures designed to maintain the security of the employer’s funds, the discharge could potentially have occurred due to her misconduct. A quit to avoid a potential discharge for misconduct is not with good cause. Moreover, claimant could have continued to work for as long as the employer would permit her to. While she might have been discharged after all, many people obtain other work after being discharged from a job.

Order No. 18-UI-121465 at 3. We disagree.

On October 24, 2018, following her interview with the district manager and loss prevention specialist, claimant resigned. The record shows that claimant resigned to avoid what she believed would be a discharge at the end of the investigation. During the interview, the loss prevention manager told claimant that given the circumstances, she likely would be blamed for not enforcing the employer’s cash handling policies. After stating that it was “not looking good for her,” that a termination would follow her, and if she wanted to move forward without one on [her] record there was “only one route to go,” the loss prevention manager handed claimant a pen and paper and told her what to write concerning her resignation. Based on claimant’s undisputed account of the interview, her discharge was likely imminent.

Had claimant left work to avoid a potential discharge for misconduct, her resignation would have been without good cause. *See* OAR 471-030-0038(5)(b)(F). However, the record does not show that claimant’s discharge would have been for misconduct. “Misconduct” means a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an

employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(3)(a) (January 11, 2018). In the final incident, claimant denied misappropriating the missing funds for herself and there was no evidence in the record suggesting that she had. Audio Record ~ 4:45 to 6:20. Although claimant had not strictly enforced the employer's cash handling policies with her subordinates, which may have contributed to the loss of the funds in question, claimant had been told by the previous manager that following the cash handling policies in question was "not something we do" or "enforced" due to the location of the store, which typically left the employer short-handed. Moreover, the current district manager did not dispute claimant's assertion that many of the cash-handling policies at issue in October 2018 had been neglected for a long time without any corrections being made by management. On this record, claimant's failure to follow the cash handling policies in question was the result of a "good faith error" which typically involves a mistaken but honest belief that one is in compliance with the employer's expectations, and some factual basis for believing that to be the case without reason to further investigate. *Accord Goin v. Employment Department*, 203 Or App 758, 126 P3d 734 (2006). Under OAR 471-030-0038(3)(b), good faith errors are not misconduct. Accordingly, because claimant quit work to avoid a potential discharge that, more likely than not, would not have been for misconduct, claimant is not disqualified from benefits under OAR 471-030-0038(5)(b)(F).

It is still necessary to determine if claimant quit work for good cause pursuant to OAR 471-030-0038(4). Viewed objectively, the potential discharge of a store manager for cash-handling violations posed a grave situation for claimant. We disagree with the ALJ that letting the investigation conclude and probably result in a termination for that reason was a reasonable alternative to an immediate voluntary resignation with an assurance from the employer that a separation report "would just say parted ways and nothing else would be there." Audio Record ~ 26:00 to 26:50. As a matter of common sense, it is clear that claimant likely would have experienced some damage to her reputation if she were discharged due to missing funds, and even more so if the employer reported to potential employers the allegations of inappropriate cash handling. This likely would have made finding other management work particularly difficult for claimant within her geographic location. No reasonable and prudent person in claimant's circumstances faced with a choice between discharge without any assurance regarding the reported reason for the separation, and a voluntary leaving with an assurance that the reported reason likely would help preserve her reputation, would have rejected the resignation option where, as here, either option likely would have resulted in a loss of employment.

Claimant therefore quit work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Order No. 18-UI-121465 is set aside, as outlined above.¹

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

DATE of Service: February 8, 2019

¹ This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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 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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