

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0032

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 28, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80559). Claimant filed a timely request for hearing. On December 27, 2018, ALJ Meerdink conducted a hearing and issued Order No. 18-UI-121852, affirming the Department's decision. On January 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Portland Bottling Company employed claimant as a lab technician from May 26, 2015 until October 18, 2018.

(2) As of October 16, 2018, claimant had missed a substantial number of scheduled work hours in the past year. On October 17, 2018, the employer issued a final written warning to claimant for excessive absences, tardiness and leaving work early. When the employer gave claimant the warning, she was told that if she needed more time off from work the employer was prepared to authorize an unpaid leave of absence for her. The warning stated that if claimant was late, absent or left work early at any time in the 90 days following the issuance of the warning without an excusable reason, further discipline would result, up to and including discharge.

(3) On October 18, 2018, claimant was scheduled to begin work at 6:00 a.m. The alarm that claimant had set using her cell phone did not sound to awaken her that morning because its battery had died. Claimant woke up at approximately 5:45 a.m. and realized that she could not get to work on time. Claimant charged her cell phone sufficiently to allow her to make an outgoing call. At approximately 5:50 a.m., claimant phoned her supervisor to inform him that she would not arrive on time for work because the battery powering her cell phone alarm had died. The supervisor told claimant not to come in to work. Claimant went back to bed and awakened around noon, approximately six hours later.

(4) When claimant awakened, she looked at her cell phone and saw that at 6:18 a.m., her supervisor had sent a text message to her asking if everything was all right with her. Exhibit 1 at 2. At 12:36 p.m., claimant responded to the supervisor's text and stated, "No. Am I fired?" *Id.* At 1:06 p.m., the

supervisor replied, "It doesn't look good" and stated that the employer's human resources generalist "wants you to talk to him." *Id.* Claimant assumed from the supervisor's message that the employer had discharged her. At 1:08 p.m., claimant responded, "Okay. Thank you. It was great working with you. Please give [B]ob [a coworker] my number." *Id.* The supervisor replied at 1:38 p.m., "I will. Take care of yourself." *Id.* Claimant did not report for work thereafter.

(5) At approximately 6:00 p.m., around five hours after exchanging text messages with her supervisor, claimant left a voice mail message for the human resources specialist. Claimant was aware that the generalist usually left work around 3:00 p.m., or three hours before she left the message. The generalist did not receive claimant's text message. Claimant did not follow up with the generalist to learn why he had wanted to speak with her, or to determine if he had received her voicemail message on October 18, or why he had not responded to it.

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

The first issue in this case is the nature of the work separation. OAR 471-030-0038(2) sets out the standard for characterizing a 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).

While the employer processed claimant's work separation on October 24, 2018 for job abandonment due to failing to call in or report for work after October 18, the employer's witness testified that there was continuing work available for claimant after October 18 had she contacted the employer. In contrast, claimant assumed based on the texts that she exchanged with her supervisor on October 18 that she was discharged as of that day, which is why she stated her farewells in the final text she sent that day. However, claimant agreed that no employer representative told her in plain language that she was discharged, and she appeared to believe that it was a foregone conclusion that human resources generalist would inform her that she was discharged if she made the requested contact with him. As of the text message exchange claimant had with the supervisor, the employer had not manifested an intention to sever the employment relationship. Conversely, claimant's failure to call in or report for work after October 18, taken together with her farewell text message of 1:08 p.m., is most reasonably interpreted as an objective and unequivocal manifestation of an intention to end the employment relationship. Because claimant was the first party to objectively express such an intention, claimant's work separation was a voluntary leaving on October 18, the date of the farewell text, after which she failed to report for work or notify the employer that she was going to be absent.

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.

The issue in this case is whether claimant's assumption that the employer had discharged her was good cause for leaving work. The substance of the supervisor's message that the human resources generalist wanted to talk with her, as discussed above, did not amount to telling claimant that she was discharged and was not an unambiguous expression of any particular intention with respect to claimant's employment. While it could have meant that the generalist wanted to discharge her, it also could also have meant, for example, that he intended to impose some lesser form of discipline, that he wanted to renew the employer's offer to authorize a leave of absence for claimant, or that he wanted to know the reason that claimant missed work that day to determine if she had an excusable reason. Under these circumstances, a reasonable and prudent person would have clarified with the human resources generalist, the supervisor, or some other employer representative that the employer intended to discharge claimant before failing to report for work. Because this reasonable alternative was available, claimant did not show good cause for leaving 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-121852 is affirmed.

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

DATE of Service: February 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 desisyon.

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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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