

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0054

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 22, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85436). Claimant filed a timely request for hearing. On December 7 and 21, 2018, ALJ Murdock conducted a hearing, and on December 24, 2018, issued Order No. 18-UI-121716, affirming the Department's decision. On January 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB that 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. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. We considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Sheltercare employed claimant from March 16, 2018 until September 4, 2018.

(2) Claimant was a licensed property manager and real estate broker. Claimant understood that she was obliged to follow all laws and regulations related to her licenses, and could lose her licenses if the employer violated certain state and federal housing laws.

(3) The employer was a nonprofit organization that provided housing and other services to homeless people. The employer had a property management division to provide clients with housing support and ensure that they were protecting the properties. Claimant's job title was property manager, and she worked with the director of the property management division, who also held a property management license. Claimant's job duties included signing rental agreements, collecting rent, providing rental notices to clients, and filing eviction papers for some of the properties the employer used.

(4) Claimant understood the employer to act as a property management company, and that such companies were legally required to deposit all rental income or deposits from tenants into a client trust account before using the funds. In about May 2018, claimant learned from the employer's financial department that it kept funds in customary business savings accounts. Exhibit 1. Claimant believed this practice to be illegal.

(5) Claimant told the executive director and director of operations that she believed their failure to use client trust accounts was illegal. Claimant did not have the authority to set up a client trust account for the employer. The employer did not begin using client trust accounts.

(6) Claimant also believed the employer was in violation of state law because it was not registered with the Oregon Real Estate Agency. Claimant contacted the Oregon Real Estate Board about her concern and the board told her to tell the employer and give them a chance to register the business. Claimant told the executive director and director of operations that the employer was required to register with the Oregon Real Estate Agency, but the employer did not register. The director of the property management division had also complained to the employer repeatedly since 2016 that the employer was required to register with the Oregon Real Estate Agency, and the employer did not respond to her complaints.

(7) Claimant was also concerned that the employer failed to comply with fair housing laws because of how it used background checks and selected renters. Claimant discussed her concerns regarding these matters with program and executive staff, including the director of operations. The employer did not change its practices after claimant complained.

(8) In late August 2018, claimant attended a continuing education class about client trust accounts taught by a member of the Oregon Real Estate Board. Claimant explained her concerns about the employer's failure to use client trust accounts, and asked the instructor if her licenses were in jeopardy. The instructor told claimant that she could lose her licenses, and that claimant should stop working for the employer immediately. Subsequently, claimant called the Oregon Real Estate Board to confer with another member about what the instructor told her. They told claimant she should leave work immediately because she could lose her licenses if she continued to work for a non-compliant employer.

(9) In August 2018, claimant spoke with her attorney regarding her concerns about some of the employer's practices and their impact on her property management and real estate licenses. The attorney advised claimant to quit work. Claimant did not consult with an attorney for the employer.

(10) Claimant did not bring her concerns about the employer's practices to the employer's board of directors.

(11) Claimant did not file a formal complaint with the Oregon Real Estate Agency or other regulatory agency regarding the employer's alleged failure to comply with state and federal law.

(12) On September 4, 2018, claimant left work based on the advice of members of the Oregon Real Estate Board and claimant's attorney to avoid participating in activities at work that claimant believed would jeopardize her property management and real estate licenses.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant left work with 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). 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.

In Order No. 18-UI-121716, the ALJ concluded claimant did not show good cause for leaving work when she did. The ALJ found as fact that the executive director was unaware that claimant believed the employer was violating laws.¹ Based on that finding, the ALJ also implicitly concluded that claimant did not tell the executive director her concerns by finding that claimant had the reasonable alternative of complaining to the executive director.² The ALJ concluded that complaining to the employer’s board of directors and a state regulatory agency were also reasonable alternatives to quitting for claimant.³ The ALJ also apparently reasoned that claimant did not face a grave situation, because she concluded that even had the employer continued its practices after claimant complained, the record did not show claimant would lose her licenses based on the employer’s practices.⁴

We disagree with the ALJ. First, we conclude that claimant faced a grave situation at work. Claimant left work because she believed the employer was not complying with the law and that she faced an immediate risk of having her licenses revoked if she continued to work for the employer. The record shows that claimant had an earnest and reasonable basis to believe the employer was acting unlawfully based on her own knowledge of the law. Claimant’s concerns were confirmed by claimant’s coworker, who also had a property management license, and two representatives from the Oregon Real Estate Board. Moreover, the board representatives and claimant’s attorney recommended that claimant leave work immediately to preserve her licenses. Even were claimant incorrect about her understanding of the law, no reasonable and prudent person would ignore such advice and continue to work for their employer for any additional period of time.

We also disagree that the alternatives posed by the ALJ were reasonable alternatives for claimant to pursue before quitting work. The preponderance of the persuasive evidence at hearing showed that claimant did complain to the executive director and the director of operations about some of her concerns, and that they did not change their practices or assure claimant that they had confirmed with their own counsel that they were complying with the law. The record also shows that more likely than

¹ Order No. 18-UI-121716 at 2.

² Order No. 18-UI-121716 at 3.

³ Order No. 18-UI-121716 at 3.

⁴ Order No. 18-UI-121716 at 3.

not, additional complaints to the employer would have been futile, because claimant's coworker first complained about the employer's failure to register with the Oregon Real Estate Agency in 2016, and the employer had not responded to her complaint. Claimant had an objectively reasonable basis to believe that continuing to work for the employer might involve her in illegal activities and pose an immediate risk to her license. Under such circumstances, a reasonable and prudent person would conclude that she had no reasonable alternative but to leave work immediately. Claimant had good cause to leave work when she did. She is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 18-UI-121716 is set aside, as outlined above.

DATE of Service: February 13, 2019

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

NOTE: 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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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