

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0076

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 113313). Claimant filed a timely request for hearing. On January 8, 2019, ALJ Snyder conducted a hearing, and on January 10, 2019 issued Order No. 19-UI-122500, affirming the Department's decision. On January 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument but failed to certify that he provided a copy of it 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 did not show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090(2) (October 29, 2006). For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Verizon Wireless employed claimant as sales representative from December 30, 2013 until October 9, 2018.

(2) The employer used various means to ensure that employees would voice any workplace concerns or issues that they had. The employer had district managers who were available to employees to address concerns or issues that employees were not willing or able to address with their store managers or general managers. The employer had a human resources department that employees could contact with concerns or issues. The employer also had a 1-800 phone number that employees could use 24 hours a day to report anonymously any workplace concerns or issues. Claimant was aware of these means to raise workplace concerns or issues.

(3) Sometime shortly before May 2018, claimant discovered that the employer intended to transfer him to a different store. Claimant had heard about the general manager and assistant manager of that store and did not want to work under them. Claimant contacted his former general manager to determine if he

could avoid the transfer. The former general manager referred claimant to the district manager. Claimant told the district manager that he did not want to work with the managers of the store into which the employer planned to transfer him. The district manager told claimant that he was not going to overrule his transfer to that store.

(4) In May 2018, claimant transferred into the new store. After the transfer, claimant thought the assistant manager treated him in an offensive manner. Once, the assistant manager yelled at claimant in front of customers and coworkers because claimant was not performing to the level the manager wanted. Later that day, when claimant tried to explain that he had not liked how the assistant manager had treated him in front of others, the assistant manager dismissed his explanation with a rude comment. On other occasions, the assistant manager behaved in other ways that claimant thought were rude and offensive. On one occasion, claimant complained to the general manager about the assistant manager's behavior. The general manager told claimant that it was not normal for the assistant manager to behave as claimant described. Claimant did not bring up again his concerns with the general manager.

(5) On July 25, 2018, a manager from another store came to claimant's store. Claimant told this manager that he was having problems with the assistant manager. The manager advised claimant to file a complaint using the employer's anonymous tip phone line. Claimant intended to call the tip line or contact the employer's human resources department or higher management about the assistant manager, but did not do so because his wife went into labor and then gave birth.

(6) After July 25, 2018, claimant was on paternity leave. Claimant returned to work for four days in September 2018 until he arranged for further leave. During those four days, claimant did not have difficulties with the assistant manager. While claimant was on paternity leave, he did not contact the general manager of his store, the district manager, his former general manager, the human resources department or the 1-800 anonymous tip line to report the behavior of the assistant manager that he considered objectionable or that he was considering quitting work over that behavior.

(7) On October 9, 2018, claimant notified the employer that he was quitting, and would not be returning to work at the end of his paternity leave. Claimant quit work because of how the assistant manager had treated him.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when [she/he] 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.

Assuming that the assistant manager's treatment of claimant before he went on paternity leave constituted a grave situation, claimant had alternatives to leaving work when he did. While claimant

contacted his former general manager and the district manager to avoid being transferred to the store where the assistant manager worked, he did not complain to either after the transfer that his fears were realized and that the assistant manager had begun to mistreat him after he arrived. Claimant did not contact the general manager of his store about additional incidents of his alleged mistreatment by the assistant manager to alert the general manager that such behavior was not atypical of the assistant manager, as the general manager had believed. Claimant also did not contact the human resources department or the 1-800 anonymous tip line to complain about the behavior of the assistant manager although he was aware that those additional resources were available to remedy such workplace issues. Claimant did not show by a preponderance of the evidence that pursuing these alternatives would have likely have been futile to correct the behavior of the assistant manager that claimant considered objectionable.

Because claimant did not pursue the alternatives to quitting that were reasonably available to him, he did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-122500 is affirmed.

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

DATE of Service: February 14, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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.

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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