

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0111

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 80541). Claimant filed a timely request for hearing. On January 16, 2019, ALJ Vaughn conducted a hearing, and on January 17, 2019 issued Order No. 19-UI-122913, concluding that claimant had good cause to quit. On February 2, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument that presented new information not offered into evidence during the hearing. The employer did not explain why it was unable to present the new information at the hearing or otherwise show that factors or circumstances beyond its reasonable control prevented it from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider the employer's new information when reaching this decision.

FINDINGS OF FACT: (1) Eroad Inc. employed claimant as accounts receivable administrator from December 14, 2016 until October 29, 2018.

(2) Claimant worked on very small work team in Oregon that had three members, including claimant, the accounts payable administrator, and a manager. Much of the employer's management worked out of the employer's headquarters in New Zealand.

(3) Claimant and other employees disliked working with the manager of claimant's team. The manager had fits of temper, yelled at claimant and other employees and treated them poorly. The manager did not know how to use the employer's accounting software and required claimant to perform her work without guidance. Claimant was overworked. When claimant took a day off, the manager often would contact her many times for assistance. The employer paid claimant by the hour and claimant was not compensated for those contacts. On one occasion, claimant thought the manager wanted her to take steps that would result in insurance fraud.

(4) On April 19 and 20, 2018, two employees left employment as a result of the manager's behavior. On both days, claimant spoke at length with a vice-president of finance and a human resources representative based in New Zealand about the departures and the behavior of claimant's team manager that claimant thought was objectionable. The employer planned to hire a new vice-president of finance and to have that person evaluate the performance of the members of claimant's team, which would include the manager. The employer did not inform claimant of its plans or that it intended to assess the manager's performance.

(5) After April 2018, claimant complained many times about behaviors of the manager that she found objectionable to the employer's president, two vice-presidents and a human resources representative. Sometime after April 2018, the employer investigated claimant's complaint that the manager had wanted her to commit insurance fraud and determined that the complaint was based on claimant's misunderstanding of what the manager had wanted. The employer also determined that the manager did not react well to workplace stress and decided that it was going to work with the manager to improve his stress management. The employer did not inform claimant of the results of its investigation or that it was going to take steps help the manager deal better with stress. Claimant did not perceive any change in the manager's behavior at any time after April 2018.

(6) When claimant complained to one of the employer's vice-presidents in New Zealand about the manager, that vice president told claimant that he was going to let the new vice-president of finance determine how to deal with the manager. Sometime after April 2018, the employer hired a new vice-president of finance. On many occasions after the hiring of a new vice-president of finance, claimant complained to that vice-president about the manager of her team. The new vice-president of finance told claimant several times that she was going to fire the manager unless he resigned from his position. The new vice-president of finance did not give claimant a timeline by which she would take action. The employer did not let the manager go.

(7) Sometime after the new vice-president was hired, she began her evaluation of claimant's team. The vice-president determined that claimant was overworked and decided that some of claimant's duties would be reassigned. The employer never informed claimant of this evaluation.

(8) On October 29, 2018, claimant's manager told claimant that an employee had told him that the employee was quitting because of claimant. When claimant responded that she had not been aware that the employee was quitting, the manager then said that he, as well, had not known of the employee leaving because he was on vacation when it happened. Claimant thought that the manager's two comments were inconsistent in that the employee could not notify the manager that the employee was quitting if the manager was on vacation at the time. Claimant thought the manager was being dishonest. That day, claimant notified the employer that she was leaving work effective immediately. Claimant decided to leave work because of the manager's behavior.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily 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.

Claimant's testimony about how objectionable she considered the manager's behavior appeared sincere. The employer did not dispute claimant's testimony that two other employees had quit working for the employer due to the manager's behavior only a few months before claimant left, which tends to corroborate that the manager's treatment of employees was objectively offensive. Given this corroboration and the very small size of the team, it may well have been that the manner in which the manager treated claimant constituted a situation of gravity. In addition, the employer did not challenge claimant's testimony that the manager often contacted claimant about work-related matters when she was off duty and that she was not compensated for the time she spent in those contacts. It was unlawful for the employer not to pay claimant for that time. *See* OAR 839-020-0010(1). It was the employer's responsibility to ensure that claimant did not perform uncompensated work and not claimant's obligation to decline to perform it. OAR 839-020-0040(2), (4). Under the totality of these circumstances, including the manager's treatment of claimant and the unlawful employment practices in which he engaged, claimant's situation was likely grave.

With respect to reasonable alternatives, claimant contacted the employer's president, two vice-presidents on multiple occasions, and a human resources representative to complain about the manager's behavior. Despite claimant's successive attempts to have the employer intervene to correct the manager's behavior, the employer did not tell claimant how it intended to address her concerns other than for the statement of the vice-president of finance that she would fire the manager if he did not resign, but without providing even a tentative timeline for doing so. Because claimant had not perceived any positive changes in the manager's behavior, a significant period of time had passed without the manager leaving or being let go, and the employer did not make claimant aware of what steps it was taking to improve the manager's behavior, it was reasonable for claimant to conclude that giving the employer further opportunities to correct the manager's behavior would be futile. Under these circumstances, claimant adequately explored the reasonable alternatives available to her before she decided to leave work.

On this record, claimant showed good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-122913 is affirmed.

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

DATE of Service: March 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 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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