

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0125

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 163640). Claimant filed a timely request for hearing. On January 23, 2019, ALJ Seideman conducted a hearing, and on January 25, 2019 issued Order No. 19-UI-123478, affirming the Department's decision. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that she did not offer into evidence during the hearing. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider new information if the party offering the information shows that factors or circumstances beyond its reasonable control prevented from offering the information into evidence at the hearing. Claimant stated in her argument that she was not able to offer the new information during the hearing because at that time she was under extreme stress due to suspected pregnancy complications and that, combined with the "distortion of facts" by the employer at the hearing, it was an "overwhelming task at the time to organize my response." In support of that statement, claimant submitted a December 5, 2018 doctor's note stating that claimant was being seen at the doctor's office for her pregnancy, with an estimated delivery date of June 16, 2019.

However, it was within claimant's reasonable control to anticipate the employer would dispute her version of the events resulting in her work separation, especially given that decision # 163640 concluded that claimant voluntarily left work, and claimant argued that she was discharged. And claimant's general assertion that she was under "extreme stress" at the January 23 hearing due to suspected pregnancy complications, supported only by a December 5 doctor's note stating that claimant was being seen at the doctor's office for her pregnancy, is not sufficient to show that claimant was incapable of responding to the employer's version of events. Without additional explanation or supporting evidence, we cannot conclude that it was beyond claimant's reasonable control to offer her new information into evidence at the hearing. We therefore did not consider claimant's new information when reaching this decision.

FINDINGS OF FACT: (1) BKD Employee Services employed claimant as a medication technician at a care facility from April 3, 2018 until October 15, 2018.

(2) On October 8, 2018, the employer suspended claimant based on reports from other employees. The employer left a message on claimant's cell phone informing claimant that it wanted to meet with her on October 12, 2018 to discuss the suspension. Claimant did not receive the message until after the meeting, and therefore did not attend. That same day, the employer left a message on claimant's cell phone and sent her a letter asking her to contact the employer on or before October 15, 2018. Claimant did not receive the message.

(3) Sometime on or around October 15, a coworker told claimant that her name did not appear on the employer's most recently posted work schedule. On October 15, claimant called and left a message at the employer's front desk. Claimant also sent a text message to the office coordinator asking about the employer's work schedule.

(4) When the employer did not respond to either communication on October 15, she went to the workplace and left her uniform and name tag behind the front desk, assuming that the employer had fired her. However, the employer had not decided to terminate claimant's employment. When the office coordinator reported for work on October 16, 2018, she found the uniform and name tag that claimant had turned in, and determined that claimant had quit work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (January 11, 2018). The date an individual is separated from work is the date the employer-employee relationship is severed.

Notably, claimant did not contend that any employer representative told her that she was fired, terminated, discharged or the like. That the employer failed to respond to her messages on the same day she sent them was at best an ambiguous indication as to whether the employer's willingness or unwillingness to continue the work relationship. However, claimant's unsolicited action of turning in her uniform and name tag on October 15 was reasonably construed by the employer as an unequivocal expression of an intention to sever the employment relationship. Although claimant turned in her uniform and name tag because she believed she had been discharged, the record fails to show that the employer had decided to do so. Thus, although claimant may have been willing to continue working for the employer after October 15, the record fails to establish that the employer did not allow her to do so, and instead shows that claimant could have continued the employment relationship for some additional period of time. Claimant's work separation therefore was a voluntary leaving on October 15, 2018, the day on which she turned in her uniform and name tag.

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 voluntarily left work on October 15 because she mistakenly thought the employer had discharged her when it failed to respond almost immediately to her messages – i.e., on the very same day that she left them. However, claimant failed to show that no reasonable and prudent would have given the employer additional to clarify its intentions regarding her employment status, or attempted to clarify her employment status in person, before leaving work without a more objective indication that the employer intended to discharge her. Claimant therefore failed to establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have had no reasonable alternative but to leave work on October 15.

On this record, claimant failed to show good cause for leaving work when she did, and is disqualified from receiving unemployment benefits.

DECISION: Order No. 19-UI-123478 is affirmed.

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

DATE of Service: March 7, 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 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ ប៉ុន្តែវាជាភារកិច្ចរបស់អ្នកប្រើប្រាស់។ បើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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.

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