

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0153

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 94606). The employer filed a timely request for hearing. On February 4, 2019, ALJ S. Lee conducted a hearing, and on February 6, 2019 issued Order No. 19-UI-124116, concluding that claimant did not have good cause to quit. On February 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not presented during the hearing. Claimant did not explain why she did not offer this information at the hearing or otherwise show as required by OAR 471-041-0090(2) (October 29, 2006) that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider claimant's new information when reaching this decision. EAB considered claimant's written argument only to the extent it was based on information in the hearing record.

FINDINGS OF FACT: (1) Walgreen Company employed claimant from June 6, 2018 until November 6, 2018, last as a shift manager.

(2) During the first months of claimant's employment, the assistant store manager became the acting store manager. The assistant manager would question claimant about whether she had completed tasks assigned to her. As time passed, claimant perceived that the assistant manager was checking up on her several times each day about her progress in performing work duties. The extent to which the assistant manager monitored claimant's performance bothered claimant. The assistant manager also compared claimant's speed in completing tasks to that of claimant's predecessor and found it lacking. The assistant manager also negatively compared claimant's speed in task completion to his own. These comparisons offended claimant and she disliked them.

(3) On July 9, 2018, a new person assumed the store manager position. Soon thereafter, claimant complained to the new store manager about the behavior of the assistant store manager that she

considered bothersome and offensive. Claimant did not think that the assistant manager's treatment of her improved, and she considered that treatment to be harassment.

(4) Sometime around approximately September or October 2018, claimant complained again to the new manager about how the assistant manager treated her. The manager told claimant he would speak to the assistant manager and did so. The manager told the assistant manager that he should not directly compare claimant's performance with that of himself or other employees. After the manager spoke with the assistant manager, the assistant manager's behavior toward claimant improved.

(5) Simultaneous with the improvement in the assistant manager's treatment of her, claimant perceived that the manager was now questioning her several times each day about her progress in performing her work and her productivity. Claimant thought the manager blamed her for matters that she could not control when he negatively evaluated her work productivity. Claimant would tell the manager that if he would view surveillance videos taken in the store, he would learn that various factors hindered her in the performance of her duties, and she was not responsible for the low level of productivity that he had observed. The manager would respond by telling claimant not to make excuses.

(6) Around approximately early October 2018, the store manager issued a written warning to claimant for failing to follow the employer's protocols. The protocols at issue did not involve productivity. Claimant became so upset about receiving the warning that she had to visit the emergency department at a local hospitable.

(7) As of November 6, 2018, the manager had tracked the productivity of the store over several weeks, and had determined that it was negatively impacted by the performance of employees who worked on weekends. The manager decided that to increase the store's weekend productivity he would add an additional employee on weekends. As a result, the manager decided to cut some hours that claimant, the other shift manager and some of the cashiers were otherwise scheduled to work during the week, and reallocate those hours for an extra weekend employee.

(8) On November 6, 2018, the manager tried to speak with claimant about the need to increase the weekend productivity of the store and the decision he had made to have an extra employee work on weekends. Claimant understood the manager to blame her for causing the low productivity on weekends and to state that he was adding the extra employee on weekends for the express purpose of being more productive than claimant. At that point, claimant told the manager that she was quitting work and gave him her keys, identification badge and uniform. Claimant quit work because she felt she was being harassed and blamed for the store's low productivity.

CONCLIONS AND REASONS: Claimant voluntarily left work without 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.

The preponderance of the evidence in the record shows that claimant left work because she thought the store manager had been harassing her about her productivity before November 6. The record also shows that claimant left work because she understood the manager to blame her on November 6 for the store's low productivity and to suggest that he needed to bring on an additional weekend employee solely due to claimant's low productivity.

While claimant generally contended the manager and assistant manager "constantly" addressed productivity concerns with her, the manager testified persuasively that the productivity of the store was, in fact, an important management concern, and issues of productivity had not been brought up to harass claimant. Transcript at 5, 21, 24. Claimant did not present sufficient specific and concrete evidence to show by a preponderance of evidence that the manager's inquiries about productivity on or before November 6, or the manner in which he made those inquiries, constituted a grave situation by being harassing or a form of oppressive behavior. *See e.g., McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation by quitting will disqualify the worker from unemployment benefits).

Nor did claimant show by a preponderance of the evidence that the manager specifically blamed her on November 6 for the store's low productivity on weekends, as opposed to suggesting, for example, that that the low productivity was attributable to shift-wide staffing or other issues. Claimant also did not rule out that the conclusion she drew that the manager was blaming her for the low productivity was based on a misunderstanding of what the manager stated to her on November 6, and that a reasonable and prudent person would not have thought that the manager was holding her responsible by his comments that day. As such, claimant did not meet her burden to show by a preponderance of the evidence that objectively grave reasons motivated her to leave work when she did.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-124116 is affirmed.

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

DATE of Service: March 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

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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