

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0194

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142326). Claimant filed a timely request for hearing. On February 5, 2019, ALJ Snyder conducted a hearing at which the employer failed to appear, and on February 8, 2019, issued Order No. 19-UI-124328, concluding claimant voluntarily left work with good cause. On February 19, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a written argument to EAB that included new information about claimant's work separation. The employer's argument is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The employer did not provide an explanation for its failure to appear at the hearing or otherwise explain why or how circumstances beyond its reasonable control prevented the employer from offering information about claimant's work separation into evidence at the hearing. Consequently, the employer's request for the EAB to consider new information is denied. Additionally, we did not consider the employer's written argument because it did not send a copy of its argument to the other parties as required by OAR 471-041-0080 (October 29, 2006).

FINDINGS OF FACT: (1) Black Slate Brands LLC employed claimant from August 2018 until December 11, 2018 as a cook in a food truck.

(2) The employer's manager was claimant's supervisor. Throughout claimant's employment, her supervisor expressed dissatisfaction with claimant's work performance, yelled at her, and threatened to discharge claimant. The supervisor did not treat other employees, who were friends she had hired, in the same manner as she treated claimant. Claimant attempted to modify her performance to meet her supervisor's expectations. However, the supervisor's conduct toward claimant became increasingly hostile over time.

(3) The supervisor repeatedly yelled at claimant in front of other employees and patrons. On one occasion during November 2018, the woman who provided claimant a ride home after her shifts was waiting outside the food truck for food. When she overheard the supervisor yelling at claimant, she got back in her car, and later told claimant that she would never purchase food from that food truck. Claimant felt embarrassed.

(4) On one occasion in November 2018, claimant used a coffee pot to make coffee for customers, and discovered that the coffee pot was not functioning correctly. Claimant had not been told that the coffee pot was not working, and called the supervisor to inform her about the coffee pot. The supervisor “screamed” at claimant that she should discharge claimant for using the coffee pot. Audio Record at 12:16 to 12:21. Claimant felt frustrated because the supervisor did not give her instructions to follow, but would yell at her if she felt claimant had done something wrong.

(5) Claimant would often cry at work when the supervisor yelled at her and when she returned home after work due to how the supervisor treated her and stress from work. Claimant told the supervisor she felt uncomfortable with how the supervisor treated her and felt dissatisfied when the supervisor yelled at her for problems at work that were not attributable to claimant.

(6) Claimant had no contact information for the owner of the food truck, and did not know his last name. Claimant asked her supervisor repeatedly for the owner’s email address, and the supervisor refused to provide it.

(7) On December 11, 2018, claimant’s supervisor gave claimant a written warning stating that claimant had failed to clean the microwave. Claimant did not recall having failed to clean the microwave, but signed the written warning. After claimant completed her shift on December 11, 2018, claimant’s supervisor sent claimant multiple angry instant messages on Facebook asserting that claimant had done “multiple things wrong,” including failing to restock sodas in the soda case. Audio Record at 10:35 to 10:38. Claimant was surprised because the soda case contained 2.5 cases of soda, and only two sodas had been sold that day. Claimant sent a message asking what other things she had done incorrectly because she wanted to correct her mistakes. The supervisor responded, “I am not going to do this with you.” Audio Record at 10:40 to 10:42. Claimant did not understand why her supervisor was dissatisfied with her work performance and felt frustrated because she did not know what to do to improve her performance and avoid having the supervisor yell at her.

(8) Later on December 11, 2018, claimant quit work because of how the supervisor mistreated her.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 quit her job because her supervisor singled her out and yelled at her repeatedly in front of other employees and patrons, and sent her angry messages outside of work through Facebook. Claimant experienced stress, frustration and crying spells at work and at home due to how her supervisor treated her. Claimant attempted to change her behavior to avoid angering the supervisor, but the supervisor did not tell claimant how to change her conduct so that she could do so. Claimant told the supervisor that the manner in which the supervisor treated her made claimant feel uncomfortable. Neither of claimant's attempts resulted in an improved working environment. A supervisor's behavior toward an employee may be good cause to leave work if a claimant shows she was subjected to ongoing "oppression" or "abuse" in the workplace. *See, e.g., McPherson v. Employment Division*, 285 OR 541, 557, 591 P2d 1381 (1979) (claimants are 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 will disqualify the worker from unemployment benefits"). The continual, seemingly unavoidable mistreatment to which claimant was subjected would have caused a reasonable person to conclude that the work environment was so abusive that the only reasonable alternative was to quit the job. Claimant did not have contact information for the owner, and there is no evidence in the record to show that the employer had other supervisory personnel other than the claimant's manager and direct supervisor. Therefore, on this record, we conclude that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 19-UI-124328 is affirmed.

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

DATE of Service: March 19, 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.

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