

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0219

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 105534). Claimant filed a timely request for hearing. On January 29, 2019, ALJ Griffin conducted a hearing at which the employer failed to appear, and on February 6, 2019 issued Order No. 19-UI-124047, affirming the Department's decision. On February 26, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Neuman Hotel Group, LLC employed claimant from approximately May 1, 2016 until October 21, 2018, last as chef de cuisine, a management position.

(2) The employer did prohibit employees from supervising subordinates who were family members or individuals with whom the supervising employees had close personal relationships. For example, at one of the employer's properties, the general manager had supervised his own mother and at another, a male chef supervised his wife, who was the pastry chef.

(3) Sometime around August 2018, the employer promoted an employee to the position of food and beverage director. The new food and beverage director was the wife of the dining room manager at claimant's restaurant. Claimant thought that there were more qualified candidates for the food and beverage director position than the dining room manager's wife. Claimant thought it was inappropriate for the employer to have hired the wife for an upper management position and likely would lead to favoritism toward the dining room manager. Claimant thought that nepotism played a role in many of the employer's personnel decisions and disliked that practice.

(4) After the new food and beverage director assumed her position, claimant perceived that the dining room manager was not doing his job and was treating the employees he supervised poorly. Claimant thought the dining room manager was behaving as he did because he felt protected by his personal relationship with the food and beverage director. Claimant also thought that the dining room manager's behavior was causing a conflict between the front of the house servers, whom the dining room manager supervised, and the back of the house kitchen staff, whom claimant supervised. Claimant felt frustrated

that he was unable to resolve that conflict by approaching the dining room manager. Claimant complained to the employer's human resources department about the dining room manager's behavior and the negative impacts it was having in the restaurant. Claimant told the human resources department that it was not appropriate for the food and beverage manager to be the "boss" of her husband, the dining room manager. Audio at ~11:25. A human resources representative responded to claimant that the food and beverage director was not the direct supervisor of the dining room manager. Claimant believed that by this comment the human resources representative "brushed off" his concerns with an "excuse." Audio at ~12:40.

(5) By approximately mid-October 2018, the kitchen staff was down to 14 or 15 employees, when the kitchen required 18 to 20 employees to operate effectively. Some kitchen staff had left due to the dining room manager's behavior. As a result of the departures, claimant was required to work long hours. Sometime shortly before October 21, 2018, a cook notified claimant that he was going to leave work. On October 21, 2018, the dining room manager and a different cook became involved in an argument. The second cook quit in the middle of the shift and walked off the job.

(6) On October 21, 2018, claimant left work due to the behavior of the dining room manager that had caused the cook to quit; his belief that, at current staffing levels, the kitchen would be unable to achieve his desired quality standards; his dislike of the employer's practice of allowing managers to supervise family members; and his belief that the employer did not value his efforts.

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 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.

While claimant described several complaints he had about the dining room manager, the employer's tolerance of family relationships between supervisors and subordinates, the short staffing in the kitchen, and the employer's lack of appreciation for his efforts, he did not show that any of these matters likely gave rise to a grave situation. Notably, claimant did not contend that the behavior of the dining room manager caused specific harms to him or to others or that it created the type of abusive or oppressive work environment that has previously been found to be good cause for a claimant to leave work. See *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 will disqualify the worker from unemployment benefits). Claimant likewise did not show that the familial relationships in the workplace of which he complained, the lack of kitchen staff or the employer's lack of appreciation of his work efforts created grave circumstances such that no reasonable alternative was available to him other than to leave work. Even though claimant may have had cause to dislike the workplace atmosphere, and no longer wanted to

work in it, he failed to meet his burden to show that the working conditions he described amounted to good cause to leave work.

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

DECISION: Order No. 19-UI-124047 is affirmed.

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

DATE of Service: March 27, 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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