

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0223

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84506). Claimant filed a timely request for hearing. On February 8, 2019, ALJ M. Davis conducted a hearing, and on February 12, 2019, issued Order No. 19-UI-124482, affirming the Department's decision. On March 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asserted that the hearing proceedings were unfair and the ALJ was biased. Claimant asserted, "The ALJ in this case ignored or misrepresented most of the testimony at hearing. She seemed to have already made up her mind before the testimony began...She told us she was going to shut off additional testimony if it went longer than a few minutes. We had a witness who was available by phone to testify. The ALJ claims she tried to call and no one picked up." Written Argument at 3. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave claimant a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). The record shows the ALJ did call claimant's witness, after which she reported, "She did not answer her phone. It went straight to her voicemail." Transcript at 22. In addition, although the ALJ warned claimant's attorney that she would not let the proposed witness's testimony "go very far," she explained that because claimant's attorney reported that it would concern a topic already covered, she intended to avoid "irrelevant" and "repetitive" testimony. Transcript at 19-22. Finally, at the end of the hearing, when the ALJ asked claimant's attorney, "Anything else you'd like to present today that I haven't already heard?" he responded, "No." Transcript at 25. EAB considered claimant's remaining arguments when reaching this decision.

FINDINGS OF FACT: (1) Southern Oregon Goodwill (SOG) employed claimant as an employment specialist in its Grants Pass office from February 28, 2018 to November 6, 2018.

(2) On April 5 and 6, 2018, claimant attended a two-day training course in Medford, Oregon. Claimant felt that the trainer who led the course acted inappropriately on April 5, 2018, when he introduced himself to the attendees and spoke about his experience in the military, as a bouncer, an Ultimate Fighting Championship (UFC) cage fighter, a body builder, and a martial artist, all of which claimant considered “self-promoting.” Exhibit 1. He also showed claimant and the other attendees a cellphone photograph of himself in “shorty shorts” while in the Marines to show off the “4 pack” he claimed to have had at that time, which claimant reported “could be considered border line sexual misconduct.” Exhibit 1. On April 11, 2018, claimant learned from her supervisor that the trainer had reported to the employer’s human resources office that claimant had seemed “uninterested” at the two-day training. Exhibit 1. Claimant was bothered by that characterization and, on April 12, 2018, claimant described the trainer’s April 5 conduct in writing and in detail and gave it to her supervisor, who forwarded it to the employer’s human resources office. Although the human resources director told claimant, “I’ll be looking into this matter,” no action was taken against the trainer. Exhibit 1.

(3) In June 2018, the employer’s Grants Pass office was conducting a job fair. To help attract attendees, the office employees collectively came up with the idea of offering a drawing for a gift basket. When the vice president of workforce development heard about the drawing, she told claimant’s supervisor at the time to cancel it. However, because the supervisor had already donated the basket, she directed the employees to hold the drawing anyway, which they did. Shortly after the job fair, claimant’s supervisor resigned. One day later, the vice president issued a written warning to claimant for holding the drawing at the job fair, which claimant signed “under duress.” Transcript at 14. However, after meeting with the vice president and claimant’s new supervisor over the issue, the written warning was rescinded because claimant had not made the decision to hold the drawing.

(4) On September 28, 2018, claimant’s new supervisor informed claimant and her coworkers at a staff meeting that the trainer from the April 5 training would be relocated to their Grants Pass office on October 1, 2018. Claimant did not feel comfortable working in the same office as the trainer because of her April 5 experience, so informed the supervisor and forwarded her April 12 report about the trainer to him. Later that day, the supervisor told the trainer that claimant “ha[d] a problem with [him],” but instructed him to “act like there [was] nothing wrong.” Exhibit 1.

(5) After the trainer began working at the Grant’s Pass office, claimant tried to avoid him, although he did not engage in any of the same behaviors that offended her on April 5, 2018. On October 19, 2018, claimant moved her desk to a back office “so I didn’t have to run into this person.” Transcript at 8; Exhibit 1. She also discovered that the trainer had documented her and another coworker’s incoming and outgoing work times and their interactions with him, which he described as making him feel “segregated” from the rest of the staff. Exhibit 1. This also made claimant uncomfortable.

(6) On November 6, 2018, claimant’s supervisor and an employer vice president met with claimant to discuss the obvious tension in the office. They informed her that the trainer was going to continue working in the Grant’s Pass office and that claimant needed to “get over it.” Transcript at 6-7. That day, claimant concluded she was “very uncomfortable” about continuing to work around the trainer and decided to quit her job. Transcript at 8. She forwarded her resignation to the employer, asserting that the

relocation of the trainer to her office environment “put [her] emotional and mental health at risk.” Exhibit 1.

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

Work Separation. In written argument, claimant asserted that she was “realistically fired” because she resigned after her November 6 meeting with the employer during which she was reportedly told, “she would either have to work with [the trainer] or she could quit or she would be fired (strongly implied).” Written Argument at 2. However, OAR 471-030-0038(2)(a) and (b) (January 11, 2018) provide the standard for determining the nature of a 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; 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. Claimant admitted that she was given the option to continue to work for the employer in the Grants Pass office knowing that the trainer would remain there indefinitely. Transcript at 6-8. Because claimant could have continued to work for the same employer for an additional period of time, but instead chose to resign on November 6, 2018, the work separation was a voluntary leaving.

Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of unemployment insurance benefits unless she (or he) 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, 13P3d 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). 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 the employer for an additional period of time.

Claimant quit work on November 6 because she was “very uncomfortable” about working around the trainer who she believed had committed “sexual misconduct” at the April 5 training, and because she believed his relocation to her office environment had “put [her] emotional and mental health at risk.” However, claimant had initially stated that the trainer’s April 5 behavior “could be considered border line sexual misconduct” without specifically describing it as such, and admitted to the ALJ that after that incident and his relocation to her office, the trainer did not demonstrate any more of the behavior she had considered offensive. Transcript at 25.

Moreover, even though claimant asserted the trainer’s relocation to her office “put [her] emotional and mental health at risk,” she failed to present any evidence that she had received or even sought professional assistance for her condition. Although she asserted that the written warning she received in June 2018 was in retaliation for her complaint about the trainer in April and caused her stress, she failed to provide any evidence to support her assertion and admitted that the warning was rescinded shortly after it was given to her. Finally, although the trainer did take notes concerning the behavior of claimant and a coworker after he arrived in October, the notes primarily concerned the coworker, and those that concerned claimant were mainly about her ignoring and avoiding him, which claimant admitted doing. Accordingly, although claimant may have been “very uncomfortable” with the prospect of working in

the same office as the trainer, she failed to show that the situation was so grave that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-124482 is affirmed.

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

DATE of Service: April 4, 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

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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