

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0227

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 65240). Claimant filed a timely request for hearing. On February 21, 2019, ALJ Lewis conducted a hearing, and on February 26, 2019 issued Order No. 19-UI-125346, affirming the Department's decision. On March 5, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. In the argument, claimant contended that a "procedural irregularity" occurring at the hearing "provided an unfair advantage" to the employer. The procedural irregularity to which claimant referred was that she did not receive the documents that the employer offered for admission into evidence as Exhibit 2 before the hearing. However, the ALJ did not admit Exhibit 2 into the record for the very reason that claimant raised in her written argument. Audio at ~11:30; Order No. 19-UI-125346 at 1. It does not appear that the employer was advantaged, or claimant was disadvantaged, from the employer having attempted to have Exhibit 2 admitted into evidence at the hearing.

EVIDENTIARY MATTER: The ALJ neglected to mark Exhibit 1, which was admitted into evidence at the hearing, or Exhibit 2, which was marked for identification but not admitted. Because both exhibits are readily identifiable, EAB has marked them as a clerical matter.

FINDINGS OF FACT: (1) Black Chapman Petersen & Stevens hired claimant as a legal assistant on July 10, 2018. Claimant worked for the employer from July 30, 2018 until August 27, 2018. The employer was a personal injury law firm. The employer was organized as paperless office and maintained all records electronically.

(2) At hire, claimant had no experience working in a law office. Claimant's experience with computers was limited to those using the Apple operating system. The employer had computers using the Windows operating system.

(3) When the employer's office manager gave claimant an overview of her job responsibilities, claimant told her she was not familiar with the operating system in the employer's computers. The office manager told claimant that she would be working with the legal secretary on case settlements. The office manager also told claimant that she would be gathering and organizing medical records and other documents to send to insurance companies with the aim of settling cases out of court.

(4) From the outset of employment, claimant had difficulty learning how to use the employer's computers and generate the Excel spreadsheets that were expected of her. Claimant was slow performing her work and made errors. Shortly after claimant was hired, the office manager provided some manuals to claimant to assist her in using the computers and the installed software. However, claimant's progress continued to be slow. Because claimant, the paralegals and the legal secretary sat together in adjoining cubicles in a work area that fronted the attorneys' offices, the legal secretary would issue instructions and point out errors to claimant by speaking to her in a loud voice over the cubicle walls. The comments the legal secretary made to claimant could be overheard by the paralegals and the attorneys. Claimant disliked having her errors pointed out publicly and told the legal secretary that she preferred having such matters addressed in face-to-face conversations. The legal secretary told claimant that she did not have time to get up and visit her cubicle when she wanted to speak to her. The legal secretary continued to issue instructions to claimant and point out her mistakes by speaking over the cubicle walls.

(5) During her employment, claimant would sometimes ask the legal secretary how to accomplish a task, but the secretary would state that she did not have the time to help. Claimant told the office manager the legal secretary was not helping her and was difficult to work with. The office manager told claimant that other employees also found it hard to work with the legal secretary. On a few occasions, claimant asked the two paralegals to assist her in performing tasks she was assigned. Although the paralegals helped her, claimant thought that they both were overworked and that her requests for assistance bothered them.

(6) On occasion throughout her employment, claimant told the office manager that she did not think she was becoming proficient quickly enough in using the employer's computers and performing her assigned tasks. The office manager would tell claimant that it took time to learn new things.

(7) On Friday, August 17, 2018, approximately three weeks after claimant began working for the employer, the legal secretary propped a note on claimant's computer keyboard identifying three mistakes that claimant had recently made. In the note, the legal secretary stated that she wanted to review those mistakes with claimant on Monday, August 20. When claimant arrived at work on that Monday, she read the note and became upset. Claimant told the office manager that she was distressed by the note and started to cry. Later that day, the office manager met with claimant and the legal secretary. Claimant told the legal secretary and the office manager that she disliked to secretary's seeming impatience and unwillingness to train her. In response, the legal secretary admitted she was "grumpy" on occasion. Transcript at 26, 35. Claimant told the office manager and the legal secretary that she felt she was not progressing quickly enough in learning the job for which she was hired. They both told claimant that "it takes a while to be trained," and essentially that she should "hang in there." Transcript at 18.

(8) On Friday, August 24, 2018, as claimant was preparing to leave the office for the weekend, the legal secretary commented to claimant that she was going to have claimant prepare "demand packages" on

Monday. Transcript at 21. Claimant told the legal secretary that she did not know what a demand package was. The legal secretary told claimant to read a particular office manual for an explanation. Claimant was upset that the legal secretary had given the instructions over the cubicle wall because they could be overheard. Claimant assumed that the legal secretary expected her to read the manual over the weekend when she was off-the-clock.

(9) Over the weekend of August 25-26, 2018, claimant decided to quit work because she felt that she was not learning her job quickly enough, did not like how the legal secretary treated her, and did not think that the legal secretary wanted her to succeed.

(10) On Monday, August 27, 2018, claimant gave a written resignation to the office manager. Although the resignation stated that claimant's last day would be September 7, 2018, claimant told the office manager that she did not think she would be very productive if she stayed on for the additional two weeks. The office manager did not object to claimant leaving before September 7, and claimant decided to leave effective August 27, 2018.

CONCLUSIONS 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.

Claimant left work for three reasons: she did not think she was learning the skills needed to perform her job quickly enough; she did not like the way the legal secretary treated her; and she thought the legal secretary did not want her to succeed. Each reason is addressed in turn.

It appears that claimant was genuinely distressed by what she perceived as her slow pace in mastering the skills she needed to perform the job for which she was hired. However, she had only been working for a month when she decided to quit. No witness suggested that claimant lacked the capacity to eventually learn the skills that she needed to perform her job. It also was not suggested that the employer was threatening to terminate claimant's employment for unsatisfactory performance when she quit. While the employer's witness agreed that claimant's progress in achieving job proficiency seemed somewhat slow, the witness also stated that the learning curve differed among people, and estimated it reasonably would take three to six months for claimant to fully learn the skills necessary to perform her job. Transcript at 49, 50. Although claimant may have subjectively doubted that she could develop the skills she needed, she did not identify any harms accompanying her lack of confidence that would have led a reasonable and prudent person of normal sensitivity to conclude so early in her employment that slow progress in learning her job constituted a situation of gravity.

It also appears that the manner in which the legal secretary treated claimant was not a grave reason for claimant to leave work. The employer's witness agreed that the legal secretary could be on occasion be "grumpy" and that some of the secretary's coworkers got along with her and some did not. Transcript at 43, 44. Despite these characterizations, claimant did not show that the manner in which the legal secretary spoke to her over the cubicle walls, and her sometimes seeming impatient and stating she was too busy to help, was treatment that a reasonable and prudent person of ordinary sensitivity would have found a grave reason to leave work. Notably, claimant did not allege that the legal secretary insulted her, verbally attacked her, used foul language, engaged in fits of temper, or exploited her. Claimant did not describe behavior by the legal secretary that was abusive or created the type of oppressive work environment that amounts to good cause for leaving 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).

While claimant may have thought that the legal secretary did not want her to succeed, she did not present any evidence from which it was reasonably inferable that the legal secretary was actively sabotaging her or undercutting her efforts to master job tasks. Claimant did not show that the legal secretary's seeming impatience and lack of responsiveness to some of her requests for assistance were other than the reaction of a person with a heavy workload in a busy office who had been interrupted. To the extent that claimant's characterization of the legal secretary as not wanting her to succeed was more than a restatement that she did not like the way the secretary treated her, claimant did not show by a preponderance of the evidence that it constituted a grave circumstance.

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

DECISION: Order No. 19-UI-125346 is affirmed.

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

DATE of Service: April 9, 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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