

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0302

Reversed
No 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 # 110736). Claimant filed a timely request for hearing. On February 28, 2018, ALJ Murdock conducted a hearing at which the employer did not appear, and on March 8, 2019 issued Order No. 19-UI-126065, affirming the Department's decision. On March 21, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Oregon Employment Department employed claimant as a business and employment specialist from May 1999 until July 27, 2018.

(2) In November 2015, claimant's husband began divorce proceedings. The divorce was very acrimonious. On one occasion while the divorce was pending, claimant's husband told claimant that if he ever killed her, he would ensure that her body was never found. Claimant felt threatened by her husband and became afraid of him. The divorce became final in May 2017.

(3) During and after the divorce, claimant petitioned the court for, and was granted, several no contact orders against her ex-husband. The orders prohibited the ex-husband from coming within 150 feet of claimant, entering claimant's home, and coming onto the employer's property, where claimant worked.

(4) After the divorce was final, the ex-husband's behavior escalated despite the presence of the no contact orders. Claimant thought the ex-husband was violating the no contact orders to intimidate and harass her. Once, when claimant was stopped at stop sign in her car, the ex-husband pulled up next to her in his own car, rolled down his window and screamed foul language at her. Another time, claimant was attending church services when the ex-husband came into the church and deliberately sat in the pew directly behind her. On another occasion, claimant was attending her son's football practice when the ex-husband appeared and began walking on the track that encircled the field where the practice was taking place. During each incident, the ex-husband came closer to claimant than 150 feet.

(5) In other episodes, the ex-husband would park his car in the space next to claimant's car in the employer's parking lot, ostensibly because he was dropping off or picking up his and claimant's children from their school. The school was located across the street from the workplace parking lot. Claimant spoke to her manager about the ex-husband's behavior and began parking in another of the employer's parking lots to avoid the ex-husband. Claimant also arranged to have coworkers escort her to her car.

(6) Claimant called the police to enforce the no contact orders but was told that they would not take action because the ex-husband had not directly threatened her with physical harm. Claimant consulted with attorneys several times about enforcing the no contact orders in civil court proceedings, but was advised that it would be difficult and expensive to do so since the ex-husband had not threatened her outright. As a result of the ex-husband's persistent behavior in violating the no contact orders and the seeming impracticability of enforcing them, claimant felt intimidated and unsafe.

(7) In addition to engaging in incidents that violated the no contact orders, the ex-husband also told acquaintances of claimant that claimant had threatened to kill him or kill the children. The ex-husband also told a judge during a hearing that claimant had thrown chairs at the ex-husband during a mediation session, which she had not. The mediation had taken place next to the sheriff's office, where the throwing of chairs would not have escaped notice. As a result of these incidents, claimant thought the ex-husband was delusional, mentally unstable, and behaving erratically.

(8) In June 2018, the ex-husband dropped off claimant's son at claimant's apartment and sent claimant a text message stating that he had entered the apartment. At that time, a no contact order prohibited the ex-husband from entering the apartment. Claimant called the police about the ex-husband's behavior, but was told that they would do nothing since the ex-husband had not hurt her physically. Claimant was upset and frightened by the ex-husband's behavior in entering her apartment in violation of the no contact order, and the inability of the order to control his behavior.

(9) Around late June or early July 2018, claimant spoke with her mental health counselor about moving from Oregon to Arizona to avoid further contact with her ex-husband. Some relatives of claimant lived in Arizona. Claimant told the counselor that she would feel safer with geographic distance between her and her ex-husband. The counselor told claimant that moving away would probably help her mental well-being. Claimant decided to move to Arizona because she was fearful of what her ex-husband would do and felt unsafe.

(10) On approximately July 6, 2018, claimant notified the employer that she was leaving work and her last day would be July 27, 2018. On July 27, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

ORS 657.176(2)(c) provides that 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. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). ORS 657.176(12) provides that an individual may not be disqualified from benefits for voluntarily leaving work if the individual is a victim of stalking, or the individual believes that the individual could become a victim of stalking, and the individual leaves work in order to protect the individual from stalking that the individual reasonably believes will occur as a result of the individual's continued employment.

“Stalking” means that the person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person that alarms or coerces the other person, it is objectively reasonable for the victim to have been alarmed or coerced by the contact, and the repeated and unwanted contact causes the individual reasonable apprehension regarding the personal safety of the individual. OAR 471-030-0150(3) (January 11, 2018).

Order No. 19-UI-126065 concluded that claimant did not show good cause for leaving work. The basis for this conclusion was that claimant did not show her situation was grave because the ex-husband had not engaged in violent behavior or threatened violence since 2015. Order No. 19-UI-126065 at 3. Order No. 19-UI-126065 alternatively concluded that claimant failed to show good cause for leaving work because she did not establish that she was compelled her to leave Oregon and move to Arizona, and she could have pursued a job transfer to a locality in Oregon that would have allowed her to continue working for the employer while avoiding her ex-husband. Order No. 19-UI-26065 at 3. However, Order No. 19-UI-126065 did not consider the applicability of ORS 657.176(12) and OAR 471-030-0150(3) to claimant’s voluntary leaving. When that statute and regulation are applied, claimant may not be disqualified from unemployment insurance benefits.

The employer did not appear at hearing and claimant’s testimony was undisputed. Based on claimant’s testimony, it appears that the ex-husband’s contact with her after the finalization of the divorce was intentional, repeated and unwanted, and therefore constituted stalking. The unwanted contact was in violation of the letter and spirit of the no contact orders, and its persistent and intrusive nature alarmed claimant in that it upset, distressed and frightened her. Claimant’s concerns about her ex-husband’s mental state and the erratic nature of his behavior appeared reasonably based, particularly in light of his persistent violations of the no contact orders, and claimant’s resulting alarm and apprehension regarding her personal safety also appeared reasonable. Claimant’s belief that her ex-husband would continue stalking her if she continued working for the employer also was reasonable since, despite the existence of several no contact orders, he had been stalking her without significant interruption since 2015. And while it may have been hypothetically possible for the employer to have transferred claimant to another of its offices in Oregon, the record fails to show that it was unreasonable for claimant to believe that her ex-husband’s stalking would continue to occur if she remained in Oregon.

On this record, ORS 657.176(12) and OAR 471-030-0150 apply to claimant’s voluntary leaving. Because claimant met all requisites, claimant may not be disqualified from benefits based on this work separation.

DECISION: Order No. 19-UI-126065 is set aside, as outlined above.

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

DATE of Service: April 24, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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