

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0306

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 140835). Claimant filed a timely request for hearing. On March 13 and 14, 2019, ALJ Meerdink conducted a hearing, and on March 15, 2019 issued Order No. 19-UI-126458, affirming the Department's decision. On March 26, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Blue Tech LLC employed claimant as an instructional designer from approximately April 2017 until December 10, 2018.

(2) In approximately 2013, claimant was diagnosed with depression and anxiety. Claimant was prescribed antidepressant medicine.

(3) On November 29, 2018, claimant was speaking with a coworker about her frustrations with her manager and her employment. In that conversation, claimant commented that she understood how some employees could "come into an office and shoot it up." Transcript of March 14, 2019 hearing at 23.

(4) On November 30, 2018, claimant's coworker reported claimant's statement to the director of operations and finance. The coworker told the director that claimant's statement and attitude had been very upsetting to her. That same day, on November 30, the president and the director met with claimant

to discuss her comment. Claimant did not deny having made the comment, and apologized for upsetting the coworker. Claimant then expressed at length her dissatisfaction with her manager. The president and the director told claimant to leave for the day and think about what she wanted to do. Claimant asked if she was suspended or discharged. The employer representatives told claimant she was not, but that they all needed to determine how best to proceed. The director told claimant she would phone her about returning to work on Monday, December 3, 2018.

(5) Over the weekend of December 1 and 2, 2018, while claimant thought about her employment, she experienced anxiety, with symptoms of insomnia and poor appetite. On December 2, claimant went to an urgent care clinic and was prescribed an anti-anxiety medicine. Claimant had never been prescribed anti-anxiety medicine before.

(6) On Monday, December 3, the director called claimant and told claimant that she and the president wanted to meet with claimant that afternoon. At that meeting, the president told claimant that to address the issues between claimant and her manager, the employer wanted claimant to return to work under a performance improvement plan (PIP). The president told claimant that the PIP would require her to meet regularly with the manager and to improve her work performance within 60 days. The president told claimant that if she did not agree to sign the PIP she could leave work under a separation agreement that would provide six weeks of severance pay. The president told claimant to think carefully about how she wanted to proceed and to let the employer know her decision.

(7) On December 6, 2018, claimant notified the director of operations and finance by email that she wanted to return to work and would sign the PIP. The director replied that she would contact claimant the next day about the schedule under which she would return to work. On December 7, 2018, the director contacted claimant and told claimant that she was expected to report for work on Monday, December 10, 2018 and, at that time, she also was expected to apologize to her team and to her manager before discussing the details of the PIP with the manager and the director.

(8) After December 7, claimant thought about whether she was willing to apologize to her coworkers as a condition of returning to work. On December 9, 2018, claimant called the president and told him she was turning down the PIP and would sign the separation agreement.

(9) On December 10, 2018, claimant signed the separation agreement. On that day, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

In her written argument, claimant stated that she “was not allowed to continue working for the employer [] unless she admitted fault.” By this language, claimant may be suggesting that the employer discharged her rather than that she voluntarily left work. The standard for properly characterizing the work separation is set out at OAR 471-030-0038(2) (December 23, 2018). 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. OAR 471-030-0038(2)(a). 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. OAR 471-030-0038(2)(b).

Claimant did not contend at hearing that any employer representatives ever told her that she was fired, terminated, discharged or the like. Although the employer might well have been unwilling to allow claimant to return to work if she did not sign the PIP, matters never reached that point. Instead, claimant agreed to sign the separation agreement and leave work before determining whether the employer would actually have been unwilling to allow her to return to work if she refused to make the required apologies. Because claimant chose to accept the separation agreement before the employer objectively manifested its intentions, or indicated that it would not allow claimant to return to work if she did not apologize, the preponderance of the evidence shows that claimant's work separation was a voluntary leaving on December 10, 2018, the date that she signed the separation agreement.

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). Claimant had depression and anxiety, which presumably were permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

At hearing, claimant did not identify any concrete and specific harms she would experience as result of apologizing to her manager and coworkers, and her objection appeared to be merely that she did not want to express regret about her behavior. Claimant did not contend that the anxiety and depression from which suffered were aggravated at the prospect of apologizing, or that mental health symptoms interfered with making the apology or caused it to become a grave circumstance. Although claimant stated in passing at the hearing that she had not wanted to apologize because that might make her "legally liable for something," it is difficult to see how making an apology would reasonably create additional liability when claimant readily admitted that she made the statement to the coworker about shooting and guns. Transcript of March 14, 2019 hearing at 31. Whatever claimant's reasons for not wanting to apologize, she did not meet her burden to show, more likely than not, that making the apology would have created an objectively grave situation for a reasonable and prudent person who experienced the type of depression and anxiety that she did.

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

DECISION: Order No. 19-UI-126458 is affirmed.

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

DATE of Service: April 25, 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

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 محكمة 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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