

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0366

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 62221). Claimant filed a timely request for hearing. On April 2, 2019, ALJ Monroe conducted a hearing, and on April 10, 2019 issued Order No. 19-UI-127962, concluding that claimant had good cause to quit. On April 12, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) North Wasco County School District employed claimant as a nutrition specialist for around one month, from late December 2018 until January 31, 2019.

(2) After claimant was hired, a manager tried to instruct claimant in her duties. Claimant experienced significant difficulties in learning the tasks she needed to perform daily. After her first week, claimant spoke with the manager about problems she was having in learning her duties. The manager told claimant that the nutrition specialist job was one of the easiest in the school district, and claimant should be able to perform it without assistance in two weeks.

(3) By approximately the second week of her employment, around early January 2019, claimant continued to experience problems in remembering what work tasks she needed to perform each day and in performing them satisfactorily. As a result, the manager continued to give claimant daily instructions and help claimant perform her daily job duties. Claimant began crying every day about work. Around that time, claimant again told the manager that she was unable to learn her job duties, and asked the manager to prepare written list of her job duties and instructions as to how to perform them. The manager told claimant that claimant should be able to learn the job without a list and instructions, and that the manager did not have time to prepare those materials for claimant. Claimant tried to prepare her own list and instructions based on her recollection of what the manager had told her. When claimant showed what she had prepared to the manager, the manager told claimant that the list and instructions were inaccurate.

(4) After trying unsuccessfully to prepare her own written instructions, claimant continued to have problems remembering and performing her daily tasks. Claimant continued to require daily assistance from the manager. Claimant brought up the problems she had in mastering her job duties with the manager on at least two more occasions. In response, the manager expressed frustration that claimant was not learning more quickly and told claimant that she had been putting off her own duties to make the time to assist claimant. Claimant was distressed at her lack of progress in learning her job duties and that she was causing the manager to fall behind on the manager's own workload. Claimant continued crying every day about work.

(5) On approximately January 24, 2019 claimant spoke with the head of the nutrition department about her difficulties learning her job and her manager's efforts. Claimant told the nutrition department head that although she had asked the manager to prepare written instructions to help her, the manager had not done so. The nutrition department head did not suggest any other means that might improve claimant's ability to remember or learn how to perform her tasks, but commented that the nutrition specialist job did not seem to be right for claimant. The nutrition department head told claimant that she was going to set up a meeting with claimant, the human resources department, and herself. After January 24, 2019, claimant began looking for other work that the employer had into which she could transfer. Claimant was unable to locate any such positions.

(6) On January 30, 2019, claimant met with a human resources department representative and the nutrition department head. The employer representatives told claimant that she was learning her job slowly and that she was causing the manager to fall behind in the manager's own work due to the assistance the manager needed to give claimant. The employer representatives told claimant that she should consider applying for work with an organization that the employer used to fill various substitute positions.

(7) On January 31, 2019, claimant quit work. Claimant did so because had not learned her job fast enough, she was causing her manager to fall behind on the manager's own workload, and there were no other jobs with the employer into which she could transfer.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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.

Because no representatives of the employer offered evidence at hearing, claimant's testimony was unchallenged. As of the time she quit, claimant was experiencing ongoing negative emotional effects from her inability to perform her job, as indicated by her testimony that she was crying every day about work. When claimant sought assistance from her manager and asked the manager to give her written

materials to assist her in performing her job, the manager merely expressed frustration that claimant was learning so slowly and required so much help. When claimant decided she needed to explore alternatives beyond her manager, she went to nutrition department head, who essentially counseled her to quit by offering no suggestions about how she might better learn her job duties, and telling claimant that the job did not appear to suit her.

When claimant met with the nutrition department head and representative(s) from human resources, those employer representatives also did not offer options to claimant that would have improved her ability to perform her job. In effect, those representatives also advised claimant to quit by suggesting that she seek employment elsewhere and offering no advice as to how to improve her work performance. On these facts, claimant reasonably would infer that it was the consensus opinion of her manager, the nutrition department head and the human resources representative that she was incapable of learning the nutrition specialist job, there were no alternate means by which she might try to learn that job, and that she should leave work as a result.

On this record, it appears that claimant explored the alternatives that were reasonably available to her in becoming better at her job duties. None was successful. It also appears that claimant explored the alternative of transferring to a different position in the event she was unable to become proficient at the position of nutrition specialist. No such position was available. Given the distress that claimant apparently felt working at a job that she was unable to perform and the inability or unwillingness of the employer representatives to help, a reasonable and prudent person in claimant's situation likely would not have continued to work for the employer for an additional period of time.

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

DECISION: Order No. 19-UI-127962 is affirmed.

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

DATE of Service: May 15, 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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