

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0396

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 20, 2019, the Oregon Employment Department (the Department) issued notice of a decision concluding claimant quit work without good cause (decision # 74251). On March 12, 2019, claimant filed a timely request for hearing. On March 29, 2019, ALJ Janzen conducted a hearing, and on April 2, 2019 issued Order No. 19-UI-127436 affirming the Department's decision. On April 22, 2019, claimant filed a timely application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090. Accordingly, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) U-Haul Co of Oregon employed claimant as a customer service representative, last from June 2018 to August 28, 2018.

(2) In late August 2018, claimant obtained information that led her to believe that her live-in boyfriend was either abusing her 11 year-old daughter or was grooming her for that purpose and that her daughter had failed to disclose information about her interactions with him concerning a new cell phone claimant had been unaware of. While at work, she spoke to the employer's manager about the situation and shared her suspicions with him.

(3) On August 28, 2018, claimant decided to break up with her boyfriend, leave her home and her job, and remove herself and her daughter from the area to prevent the possibility of her daughter being sexually abused. She informed her manager that day that she was quitting immediately and did so to prepare to move from the area.

(4) Over the next two weeks, claimant reported the situation to the local Oregon Department of Human Services (DHS) office, which conducted an investigation concerning claimant's boyfriend and claimant's daughter. She also packed her belongings and prepared to move from the Warrenton area where she worked and resided. However, at the end of the two week period, it was concluded by DHS that claimant's boyfriend had not sexually abused her daughter. After claimant learned of this, she decided not to move from the area and asked the employer for her job back, which request was declined.

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 generally 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) (December 23, 2018).

Notwithstanding ORS 657.176(2)(c) and OAR 471-030-0038(4), ORS 657.176(12) provides that "[a]n individual may not be disqualified from receiving benefits under subsection (2)(c)" if "[t]he individual...believes that the individual or a member of the individual's immediate family could become a victim of...sexual assault" and "[t]he individual leaves work . . . in order to protect the individual or a member of the individual's immediate family from...sexual assault that the individual reasonably believes will occur as a result of the individual's continued employment . . ."

Order No. 19-UI-127436 concluded that claimant voluntarily left work without good cause based upon the rationale that although claimant faced a "grave situation" because she was concerned that her boyfriend was abusing her daughter, she failed to speak to the employer about potentially reasonable alternatives to quitting before doing so. However, the order was based on an incorrect analysis and did not analyze claimant's voluntary leaving under the applicable statute.

Order No. 19-UI-127436 analyzed claimant's decision to leave work using the generally applicable good cause standard set forth in OAR 471-030-0038(4), which defines "good cause" for leaving work in relation to the availability of objectively reasonable alternatives to doing so under the circumstances presented. However, under ORS 657.176(12) that standard does not apply to situations involving the sexual assault or the potential sexual assault of a member of an individual's immediate family. Under that statute, an individual who quits work to avoid a potential sexual assault of a member of the individual's family is not required to pursue reasonable alternatives to leaving work to establish good cause for quitting.

Here, under the cited statute, the only relevant factual issues are whether claimant believed that her daughter could become a victim of sexual assault and whether she left work to protect her daughter from sexual assault she reasonably believed would occur as a result of her continued employment. Under the statute, it is irrelevant whether claimant explored the possibility of reasonable alternatives to quitting with the employer.

There is no dispute in this record that when claimant quit, claimant believed that her daughter had become or could become a victim of sexual abuse by her live-in boyfriend. The only remaining question is whether she had a reasonable belief that sexual abuse could occur as a result of her continued employment and residence in the area or that remaining in the area would or could jeopardize her daughter's safety.

Claimant's belief concerning possible sexual abuse by her boyfriend was strong enough that claimant quit her job, prepared to move from the area, and reported the matter to DHS, which opened and conducted an investigation over the matter. The only reasonable inference that can be drawn from those circumstances is that claimant had a sincere and reasonable belief that continuing to reside and work in the Warrenton area would jeopardize her daughter's safety or subject her to possible sexual abuse. Accordingly, although after DHS conducted its investigation claimant decided her daughter's safety would not be at risk by remaining in the area, the preponderance of the evidence shows that when claimant quit, she had a reasonable belief that her daughter might be subjected to sexual abuse as a result of her continued employment and residence in the area. Claimant therefore voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 19-UI-127436 is set aside, as outlined above.¹

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

DATE of Service: May 24, 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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¹ 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.



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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 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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