

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

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0407

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 13, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132010). Claimant filed a timely request for hearing. On April 12, 2019, ALJ Janzen conducted a hearing, and on April 16, 2019, issued Order No. 19-UI-128232, affirming the Department's decision. On April 23, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) D & F Plumbing Company employed claimant last from November 2018 until February 20, 2019 as an office manager. The employer had two owners. One planned to retire; the other owner and his wife planned to take over the business.

(2) Throughout claimant's employment, the employer's finance and benefits manager sent claimant text messages after work hours that claimant considered to be "unprofessional" in tone. Transcript at 11-12. The finance manager sent her emails asking, "Who do you think you are?" and stating, "You think you can do whatever you want." Transcript at 12. On one occasion, he texted claimant twenty minutes after her shift ended telling her she was supposed to be at work and asking her where she was and if she believed she could do whatever she wanted. Transcript at 13. The finance manager emailed claimant on another occasion, asking, "Well, how did you screw this all up?" when he was dissatisfied with claimant's work. *Id.* The finance manager sometimes "screamed" at claimant. Transcript at 12.

(3) Claimant felt "ostracized" by her other coworkers because one coworker refused to work with her and asked another coworker to refrain from working with claimant as well. Transcript at 17. Four of the nine employees who worked in the office did not get along with each other. The owner who planned to take over the business told them to "calm down" and to "figure out how to work with each other." Transcript at 28.

(4) Claimant complained repeatedly to the owner who planned to take over the business about the finance manager's conduct. The finance manager continued to behave in the same manner toward claimant.

(5) In January 2019, claimant found the finance manager's conduct "unprofessional" on one occasion when he showed nude photographs of his girlfriend to coworkers while at work. Transcript at 11-12. Claimant complained to the owner who planned to retire. The retiring owner told claimant that the finance manager had searched pornography during work in the past. The finance manager had been reprimanded for doing so. The owner who was not retiring told claimant, "Hey, I really need you to knock this off. We're starting a new chapter." Transcript at 15.

(6) In January 2019, claimant believed that the employer intended to discharge her, and asked the owner who was taking over the company about it. He had her meet with his wife, who told claimant she felt "bad" for claimant because the office environment was not "comfortable," and told claimant that she was not facing discharge at that time, and to "hang in there." Transcript at 10. Claimant agreed to "hang in there." Transcript at 10.

(7) At the beginning of February 2019, the finance manager felt as though he was "done" working with claimant. He began to ignore her and no longer spoke to her. Transcript at 21. Although claimant had not been reprimanded by the owners for being insubordinate or rude or for unprofessional conduct, the manager wanted the employer to discharge claimant because he felt she only followed directions from the owners, "just does whatever she wants," and was "rude and unprofessional." Transcript at 21, 24.

(8) On February 19, 2019, the employer's computer specialist assisted claimant with accessing the owner's computer to complete some accounting tasks while that owner and his wife were on vacation. The computer specialist showed claimant some emails he found on the computer. Claimant looked at the emails and saw the subject lines, which included, "Asshole Erica," "Erica is out of here," and "Fucking bitch." Transcript at 7. Claimant read the emails, which were initiated by the finance manager to the owner. The emails discussed whether the owner would discharge claimant. In one email, the owner instructed the finance manager to begin conducting offsite interviews for claimant's position. The owner's wife was copied on some of the emails. Later on February 19, 2019, claimant sent an email to the owner and his wife asking about the emails she had read. Claimant received a read receipt showing that the owner's wife read the email, but did not receive a response from the owner or his wife. They were scheduled to return from vacation the following week.

(9) Claimant immediately called the owner who was retiring and told her about the emails she had read. The retiring owner told claimant that she was "sorry" and that claimant should "start getting [her] ducks in a row." Transcript at 17.

(10) On February 20, 2019, from another room, claimant overheard the employer's finance manager talking to one of the employer's plumbers, and believed they were discussing her being discharged when the owner returned from vacation. Claimant called the retiring owner and that owner told claimant, "Just file for unemployment. You're better off without them. Just move on." Transcript at 17. Claimant felt as though she "lost it," and packed her belongings and voluntarily left work. Transcript at 6. Claimant was not willing to keep working for the employer if the employer was going to discharge her.

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) (December 23, 2018). Leaving work without good cause includes resigning to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. 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.

The order under review found that claimant faced a grave situation when she read negative emails about herself and overheard a coworker making negative comments about her, but concluded that claimant did not have good cause to quit. The order reasoned that claimant had the reasonable alternative of discussing the negative emails and comments with the owner when he returned from vacation rather than quitting work when she did. Order No. 19-UI-128232 at 2.

The record shows that claimant quit work on February 20, 2019 to avoid being discharged. Although the employer’s witnesses both contended that the employer would not have discharged claimant, the preponderance of the evidence in the record shows that claimant reasonably believed her discharge was imminent and certain. Transcript at 22, 29. The record does not suggest that claimant’s discharge would have been for misconduct. “Misconduct” means a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest. OAR 471-030-0038(3)(a). The conduct described by the employer’s witnesses at hearing was that claimant left work early, failed to follow instruction from the finance manager, and did not get along with some coworkers. However, the record does not show that claimant engaged in the alleged conduct or that her conduct violated the employer’s expectations. Because claimant quit work to avoid a discharge that was not for misconduct, claimant is not disqualified from benefits under OAR 471-030-0038(5)(b)(F).

The remaining question is, therefore, whether claimant had good cause to quit work to avoid a certain, imminent discharge that was not for misconduct. Under the circumstances, the working environment had deteriorated to the point that no reasonable and prudent person would conclude that it was better to be discharged than to be discharged and also face the stigmatizing effect a discharge would likely have on her work search. The work environment was such that the finance manager refused to speak to claimant, asked the owner to discharge her, and called her foul names in emails to the owner. The owner did not take action to correct the finance manager’s unprofessional behavior toward claimant or to remedy a work environment where claimant and three other of the nine employees “a lot of times would get at each other . . . like seventh grade school kids.” Transcript at 28. Moreover, one owner had even recommended that claimant leave work.

For these reasons, the record shows that claimant quit work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-128232 is set aside, as outlined above.

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

DATE of Service: May 31, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 بمحكمة الإستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.