

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0425

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 101138). Claimant filed a timely request for hearing. On April 8, 2019, ALJ Shoemake conducted a hearing, and on April 22, 2019 issued Order No. 19-UI-128581, affirming the Department's decision. On April 29, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant included a handwritten note on the application for review that she submitted, which is construed as a written argument. EAB did not consider that argument when reaching his decision because claimant failed to certify that she provided a copy of the note to the other parties as required by OAR 471-041-0080 (October 29, 2006).

The employer submitted an argument that, although it was certified as having been provided to claimant, also contained information not presented during the hearing. EAB did not consider the additional information in the employer's argument when reaching this decision because it did not show, as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond its reasonable control prevented it from offering that additional information at hearing.

FINDINGS OF FACT (1) Environmental Management Systems employed claimant as a project coordinator for five days, from February 20, 2019 until February 25, 2019. When claimant applied with the employer she applied for the position of administrative assistant. At hire, the employer informed claimant that she would be working as project coordinator.

(2) From February 20 through Friday, February 22, 2019, the employer arranged for claimant's computer and other office equipment to be set up. The employer wanted claimant to use those first three days of employment to orient herself to her new position. However, the employer did not tell claimant of its intentions. Instead, it gave claimant the task of updating a contact list and did not otherwise tell claimant what she should be doing. Claimant completed the assigned work on the contact list very

promptly and, not knowing what else to do, began browsing through project files and policy manuals that were stored on her computer to learn about the employer's business.

(3) Over the first three days of her employment, claimant asked the office manager and some other staff what she was expected to do to occupy her time, but they did not give claimant any tasks to perform. Claimant became uncomfortable because she thought she was not being given legitimate work to perform and had no defined tasks to complete. Also during those three days, claimant overheard the employer's chief executive officer (CEO) regularly using foul language in the workplace. Although claimant was offended by the foul language, she did not tell the CEO or the employer that she disliked it or that it made her uncomfortable.

(4) On Monday, February 25, 2019, upon reporting for work, claimant told the office manager that she had nothing to do and asked to be given a task to complete. The office manager responded that he had no tasks to assign to claimant. After about thirty minutes, the office manager came to claimant and gave her a word search puzzle to complete. The puzzle contained technical terms used in the employer's industry, and claimant was expected to locate and circle those terms among the random letters and other words comprising the puzzle. Claimant thought it was "quite insulting" that she was given the puzzle to complete because she did not consider it actual work. Audio at ~13:44. However, the employer offered the puzzle to all of its employees as an enjoyable way to familiarize them with terms and words specific to the industry in which the employer did business.

(5) When the employer's CEO and president arrived at the workplace on February 25, 2019, claimant immediately went to them to discuss her employment. Claimant told them that she did not think she was a "good fit" for a job with the employer because she needed to have specific defined tasks to perform. Audio at ~13:58, ~31:19. The president interpreted claimant as stating she was quitting, and told claimant that the employer was not a "babysitter[]." Audio at 31:24. The CEO told claimant that her final check would be mailed to her, and claimant left the workplace. On that day, by her statement to the employer and failing to indicate that she did not intend to quit, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). 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.

Claimant left work for the stated reasons that the employer did not give her specific directions for the work she was expected to perform during the first few days of her employment and the CEO had used foul language during those first days. The issue is whether either or both reasons caused a grave situation for claimant and, if so, whether they were good cause for claimant to leave work. Both reasons are considered in turn.

While claimant may have been at loose ends or uncomfortable at not having specific job tasks to accomplish, this alleged situation occurred during the first few days of her employment. Claimant did not identify concrete harms or negative consequences experienced by her from not having defined tasks to perform and none can be inferred from this record as a matter of common sense. Claimant did not show that the employer's alleged failure to provide specific job tasks created a grave situation and was good cause to leave work.

With respect to the CEO's alleged use of foul language in the workplace, claimant agreed that she did not notify the CEO or the employer that it offended or distressed her and that she wanted it to stop. Audio at ~16:30. While claimant may have considered such foul language to constitute a grave situation, she did not show by a preponderance of the evidence that it would have been futile to have told the CEO of her reaction to the CEO's language use or to have sought to have the employer take steps to curb the CEO's use of foul language. Absent such a showing, claimant did not establish that she had had no reasonable alternatives to quitting work when she did, and that the alleged foul language was good cause to leave work.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-128581 is affirmed.

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

DATE of Service: May 31, 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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