

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0428

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161244). Claimant filed a timely request for hearing. On April 4, 2019, ALJ Frank conducted a hearing, and on April 12, 2019, issued Order No. 19-UI-128100, affirming the Department's decision. On April 30, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant and the employer each submitted a written argument that contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond that party's reasonable control prevented it from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing, and the parties' arguments only to the extent they were based thereon.

FINDINGS OF FACT: (1) Paulina Peak Family Healthcare employed claimant from May 2008 to February 1, 2019.

(2) Claimant worked at the employer's front desk position answering phones and performing other customer service and administrative tasks for the employer. Claimant worked approximately five days per week and between 20 to 35 hours per week, depending upon the employer's press of business. The employer paid claimant \$20.00 per hour.

(3) Over the last several months of claimant's employment, the employer received numerous patient complaints about phone calls not being answered or returned, and the rude manner in which some calls were being returned by claimant. The employer learned that patients were leaving the employer's practice as a result. It also determined that some administrative tasks had not been completed in a timely manner by claimant. It decided that the front desk position needed to be restructured and performed by two part-time employees, with a new employee being responsible for answering and returning phone calls and performing other customer service tasks, and claimant being responsible for performing the

administrative tasks. Claimant was not informed about the employer's intended restructuring of the front desk position.

(4) During the last week of January 2019, the employer placed an ad on Craigslist for a "Front Office Medical Receptionist" position, the duties of which closely matched those of claimant's position. Exhibit 2 at 15. Claimant became aware of the ad and immediately questioned the employer's office manager about it. The office manager admitted that the employer had placed the ad but refused to discuss the issue with her until the owner was present.

(5) On January 31, 2019, claimant attended a meeting with the owner and the office manager. The owner explained that the front desk position was being divided into two part-time positions, largely because of claimant's unsatisfactory work performance, and that claimant was being offered a new "Front Office Support" position with limited duties which would result in an hours reduction to 15 per week and a wage reduction to \$16 per hour. Exhibit 2 at 16; Exhibit 3 at 30. The owner requested an immediate answer from claimant but claimant became distraught and requested time to think about it. Claimant was told to consider the offer overnight and let them know in the morning if she intended to accept it. She also was told that if she felt unable to work the next day, she could take the day off. Claimant was given permission to leave early that day if she wished, which she did. The employer's owner did not give claimant her final paycheck at the meeting because she had not terminated claimant's employment.

(6) On February 1, 2019, at approximately 7:15 a.m., claimant and her boyfriend arrived together at the employer's office. While claimant remained in the vehicle, claimant's boyfriend approached the employer's nurse practitioner, who was standing at the employer's entrance, and handed her an envelope that contained claimant's keys to the office. While claimant observed the key exchange from the vehicle, claimant's boyfriend told the nurse practitioner that claimant would not be at work that day. When asked if claimant was sick, the boyfriend responded, "No. She won't be coming in today or any other day she quit." Exhibit 3 at 22. He then angrily criticized the owner and office manager for their conduct toward claimant, using foul language and "rude hand gestures" directed at the employer's security camera. Exhibit 3 at 22. Claimant did not report for work that day or any day thereafter.

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

Work Separation. Claimant asserted that she believed the employer discharged her on January 31, 2019 during her meeting with the owner and office manager while the owner asserted that claimant quit the next morning. Audio Record ~ 14:00 to 15:15; 21:00 to 24:00. The distinction between a voluntary leaving and discharge is that 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; 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) (December 23, 2018). "Work" means the continuing relationship between an employer and employee, without respect to what position the employee holds. OAR 471-030-0038(1)(a).

Although claimant explained that she believed she was discharged at the January 31 meeting because she recalled being told her job no longer existed, when the ALJ read the employer's note of the meeting and asked, "Did you request time to think about an offer [of a different job] they were making?" claimant responded "I may have sir,, I don't recall the meeting other than I was still very upset and very

distraught...” Audio Record ~ 18:00 to 19:00. She also admitted that she watched her boyfriend deliver her office keys to the employer the following morning, although she did not recall ever being asked at the January 31 meeting to return her keys. Audio Record ~ 14:00 to 15:00 and 19:00 to 19:30.

Alternatively, the employer provided detailed notes of the meeting at which it reportedly made another job offer to claimant both orally and in writing and at which claimant reportedly requested and received time to consider the offer until February 1, 2019. Exhibit 3 at 24-25. More likely than not, as of January 31, 2019, the employer had continuing work available for claimant, albeit in a position with fewer hours and at a lesser wage, which claimant was unhappy about. Because claimant could have continued to work for the employer for an additional period of time on and after January 31, 2019 by notifying the employer on February 1 that she intended to continue her employment despite the change in her position, the work separation was a voluntary leaving, which occurred that day when claimant returned her office keys without being asked.

Voluntary Leaving. Under ORS 657.176(2)(c) and *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000), 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. “Good cause” is defined generally 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). 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 asserted that she believed she was discharged and did not present the precise reason for her decision to leave work. However, from her testimony and exhibits, it appears claimant quit because she believed she was being unfairly demoted or transferred to a new position and was dissatisfied with resulting hours and wage rate of the position that was presented to her on January 31, 2019.

With regard to the proposed reduction in claimant’s hours, OAR 471-030-0038(5)(e) provides that if an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. Viewed objectively, the hours reduction from between 20 and 35 per week to 15 per week was significant and any reasonable and prudent person would find it difficult to adjust to such a reduction in hours. However, the record fails to show that continuing to work 15 hours per week for the employer would have substantially interfered with claimant’s return to full time work, or that her cost of working would have exceeded the pay she would have received for those hours. Accordingly, under that provision, the employer’s proposed reduction in hours did not constitute good cause for claimant’s decision to leave work.

With regard to the proposed wage rate of the new position, OAR 471-030-0038(5)(d) provides that if an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market as determined by employees of the Employment Department. However, that section also provides that it applies only when the employer reduces the rate of pay for the position the individual holds rather than as a result of transfer, demotion or reassignment.

Here, the record shows that the proposed wage rate of the new position was the result of the employer's decision to transfer, reassign or possibly demote claimant. Accordingly, under that provision, the employer's proposed reduction in wage rate did not constitute good cause for claimant's decision to leave work.

To the extent claimant also quit work, in part, because she believed the proposed position transfer was embarrassing, unjustified and would result in a significant pay reduction, none of those considerations, either individually or in the aggregate and viewed objectively, presented claimant with a grave situation that necessitated she quit when she did. Claimant did not assert or show at hearing that her embarrassment at being replaced in only part of her previous job was so devastating for her physically or emotionally that she had no reasonable alternative but to quit immediately. And generally speaking, to show good cause for quitting work, an individual must show that she derived some type of benefit by quitting work.¹ Here, the record fails to show that claimant improved her circumstances in any way or derived any benefit by quitting work on February 1, 2019. Under the circumstances described, we cannot say that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have accepted the employer's offer of a reduced role at reduced hours and at a reduced wage rather than concluding, as did claimant, that she had to quit.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits because of this work separation until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-128100 is affirmed.

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

DATE of Service: June 5, 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 *See e.g. Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P.3d 136 (2014).



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.

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