

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0453

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 92656). Claimant filed a timely request for hearing. On April 22, 2019, ALJ C. Smith conducted a hearing, and on April 29, 2019 issued Order No. 19-UI-128991, reversing the Department's decision and concluding that claimant voluntarily left work with good cause. On May 9, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Heaven's Best Carpet and Upholstery Cleaning employed claimant to perform janitorial services from approximately May 9, 2018 until January 9, 2019. The employer provided cleaning services to four clients.

(2) The employer assigned claimant to clean an athletic club two or three evenings a week. The employer did not assign claimant to perform cleaning for any clients other than the athletic club. The employer's daughter and son-in-law owned and operated the athletic club. Claimant was aware of the family relationship between the owners of the two businesses. Later, the owners of the athletic club hired claimant to work as a front desk manager.

(3) After claimant began working for the athletic club as a front desk manager, she also continued to provide janitorial services to the athletic club on behalf of the employer. At some point, the employer's son-in-law had discharged claimant's athletic club manager, who also worked for the employer, providing janitorial services to the athletic club. When the son-in-law discharged claimant's former manager, he told the manager that he was also discharging the manager on behalf of the employer and

did so. Claimant was aware that the son-in-law had fired the former manager both from employment with the athletic club and from employment with the employer providing janitorial services to the athletic club.

(4) Sometime before January 9, 2019, the son-in-law called the employer and told the owner that he planned to fire claimant at the end of her shift on January 9 and take away her key card, which would mean she would be unable to get in and clean the athletic club as she was scheduled to do that evening. On January 9, 2019, claimant reported for work at the athletic club and the son-in-law fired her, took her key card and told claimant she was not allowed to stay on the premises. At that time, the son-in-law told claimant that the employer had told him also to discharge her on behalf of the employer and he was doing so. Claimant believed that the son-in-law was authorized to act for the employer when he discharged her. Thereafter, claimant did not continue reporting for work with the employer.

(5) On and after January 9, 2019, the employer did not contact claimant to inform her that the employer was willing to allow her to continue working for it and to provide janitorial services to its clients other than the athletic club.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

Claimant contended that she was discharged, but the employer contended that she quit work. The first issue this case presents is therefore the nature of the work separation. 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. OAR 471-030-0038(2)(a) (December 23, 2018). 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)(b).

At hearing, it was not disputed that the employer, as distinct from the son-in-law, never told claimant that she was discharged. It also was not disputed that claimant never told the employer (or the son-in-law) that she was quitting work. The preponderance of the evidence shows that claimant stopped reporting for work because she thought the son-in-law had discharged her on behalf of the employer. While the employer's witness, the owner, denied that the son-in-law ever told claimant she was discharged, the owner was not present during the January 9 interaction between claimant and the son-in-law. Claimant's first-hand evidence as to what the son-in-law told her on January 9, that she was discharged, is entitled to greater weight than the hearsay evidence presented by the employer. On this record, it is more likely than not that the son-in-law told claimant that he was authorized to discharge her and did so.

However, the preponderance of the evidence does not show that the *employer* was unwilling to allow claimant to continue working for it after the athletic club discharged her. Indeed, it appears that both parties were satisfied with the work relationship. Nonetheless, claimant stopped reporting to work on January 9, 2019, after she believed that the son-in-law had discharged her not just from the athletic club but also on behalf of the employer. As a result, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . .

. is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would 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 their employer for an additional period of time.

The issue for purposes of determining if claimant is disqualified from benefits is whether claimant had good cause for leaving work when she did. Based on the son-in-law’s previous action in simultaneously discharging the former manager from employment by the athletic club and from performing janitorial work for the employer, claimant reasonably had grounds to believe that the employer had authorized the son-in-law to discharge her on its behalf on January 9. The familial relationship between the son-in-law and the employer’s owner gives additional credence to claimant’s belief that the son-in-law was empowered to act for the employer. That the employer’s owner did not promptly contact claimant to notify her that her discharge by the athletic club did not affect her employment with the employer gives further weight to the reasonableness of claimant’s belief that the son-in-law was authorized to discharge her for the employer. The preponderance of the evidence shows that claimant reasonably concluded that she was discharged from employment with the employer after the January 9 interaction with the son-in-law. As such, claimant had good cause to leave work, even if her belief that the employer was in fact unwilling to allow her to continue working was mistaken.

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

DECISION: Order No. 19-UI-128991 is affirmed.

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

DATE of Service: June 13, 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 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 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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