

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0471

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 5, 2019 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141745). Claimant filed a timely request for hearing. On May 9, 2019, ALJ Scott conducted a hearing, and on May 13, 2019 issued Order No. 19-UI-129840, affirming the Department's decision. On May 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sherwin Williams employed claimant, last as assistant manager, from mid-2013 through September 25, 2018.

(2) In November 2017, claimant and his coworkers grew beards for No Shave November, a prostate cancer awareness event. Claimant has Egyptian heritage and his skin was darker than that of his coworkers. After he grew a beard, claimant's coworkers nicknamed claimant "Jihadi Dave."¹ Over time, coworkers and customers all began to refer to claimant by that nickname.

(3) Many coworkers and customers used the nickname without intending to cause claimant offense, and might have intended it as a joke, so claimant did not complain to the employer about the nickname. However, claimant did not like it and considered it disrespectful and racially motivated because of his dark skin and Egyptian heritage. One customer who apparently disliked claimant used the nickname to taunt claimant. The employer's management was aware of people using the nickname and did nothing to stop them.

(4) On September 25, 2019, claimant quit work, primarily because he felt disrespected because of the nickname his coworkers and customers called him.

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

¹ Audio recording at ~ 10:25-10:35.

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.

Order No. 19-UI-129840 concluded that claimant quit work without good cause. The Order reasoned that if claimant had quit work in November or December 2017, nearer in time to when people began using the offensive nickname, he would have had good cause for quitting, but because he tolerated the nickname for ten months before quitting, he did not.² The Order stated, “A person of normal sensitivity exercising ordinary common sense would either have ignored it or found it so offensive that he or she would feel the need to leave immediately rather than waiting for 10 months . . . claimant staying around for 10 months after this treatment began makes any conclusion of gravity impossible.”³ That conclusion is absurd. Claimant could not have known in November or December 2017 that coworkers and customers would call him by the offensive nickname for a protracted period of time. The fact that claimant tolerated the situation for as long as he could does not diminish the gravity of the situation, nor did it require that claimant continue to tolerate the situation indefinitely.

Claimant quit work primarily because he disliked being called “Jihadi Dave” by coworkers and customers for ten months. Although the Arabic term “jihad” has been mis-translated to mean “holy war,” the term actually means a “meritorious struggle or effort,” and is not an intrinsically negative or offensive term.⁴ However, the term is also commonly used in the U. S. as a derogatory and racially-charged term to indicate violent association with Islamic extremist terrorist organizations.⁵ In fact, the term is defined in the urban dictionary as an “[A]rab or [S]hite terrorist” and is associated with terrorists, suicide bombers, and terrorist organizations.⁶ Given how the term “jihadi” is commonly used in the U. S., claimant reasonably understood that being called a jihadi by coworkers and customers was derogatory and meant to imply that claimant looked like he could be associated with a violent terrorist organization due to his dark skin and beard. Regardless of whether the nickname started out as a joke, or whether some of the individuals who used the nickname did not intend to cause claimant offense, being repeatedly called by a racially charged derogatory nickname over a ten-month period at work by coworkers and customers created a grave situation for claimant.

Claimant did not have reasonable alternatives to quitting when he did. Going to management was not a reasonable alternative under the circumstances because management already knew that claimant was being called by that nickname at work and tacitly tolerated it by doing nothing to stop it or indicate to employees or customers that their behavior toward claimant was not acceptable. It is immaterial that claimant did not complain about use of the offensive nickname before quitting because, objectively

² Order No. 19-UI-129840 at 3.

³ *Id.*

⁴ <https://www.merriam-webster.com/dictionary/jihad>; <https://www.britannica.com/topic/jihad>

⁵ *Id.*

⁶ <https://www.urbandictionary.com/define.php?term=jihadi>

considered, no employer that was aware that employees and customers were calling an employee by a derogatory nickname should have required a complaint before stepping in to handle the situation.

Claimant quit work because of a situation of such gravity he had no reasonable alternative but to quit work when he did. Claimant is not disqualified from receiving benefits because of this work separation.

DECISION: Order No. 19-UI-129840 is set aside, as outlined above.

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

DATE of Service: June 18, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week 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.

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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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