

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0473

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90743). Claimant filed a timely request for hearing. On February 4, 2019, ALJ Shoemake conducted a hearing, and on February 8, 2019 issued Order No. 19-UI-124311, affirming the Department's decision. On February 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On April 1, 2019, EAB issued EAB Decision No. 2019-EAB-0218, reversing Order No. 19-UI-124311 and remanding the case to the Office of Administrative Hearings. On April 19, 2019, ALJ Shoemake conducted the remand hearing, and on April 26, 2019 issued Order No. 19-UI-128865, adopting Order No. 19-UI-124311. On May 16, 2019, claimant filed an application for review of Order No. 19-UI-124311 with EAB.

FINDINGS OF FACT: (1) Bright Horizons Children's Centers employed claimant as a preschool teacher from October 17, 2017 to December 12, 2018.

(2) The employer had ongoing concerns about claimant's work performance and repeatedly counseled and warned her to improve her performance. Claimant made changes to try to bring her performance in line with the employer's expectations, but every time she thought she was doing her work correctly, she was told she was not. Claimant thought she received mixed messages from the employer.

(3) The employer required employees to undergo mandatory training approximately six months after their employment began. Claimant asked about that training and the employer refused to allow her to take it. The employer offered another employee training opportunity for career growth. Claimant asked to take that training, but the employer refused.

(4) On November 13, 2018, the employer placed claimant on a 30-day action plan to improve her work performance. The employer notified claimant at that time that continued unsatisfactory job performance and failure to follow all policies and procedures would result in her termination. The employer gave

claimant 30 days to improve her work performance, and notified her that she would be discharged if she did not do so.

(5) Claimant reviewed the plan and noticed the plan included duties she was already performing the same way the plan described. Claimant asked the employer to clarify how she could improve those duties, but was told in response that she just needed to improve. The employer did not engage with claimant in a discussion of how she was doing those tasks incorrectly or how to improve on what she was already doing.

(6) Claimant understood from what her supervisors told her that she was out of chances and was going to be discharged when the action plan ended. The employer's unwillingness to allow her to take mandatory and career growth training signaled to her that the employer would not allow her to continue working much longer. She concluded that her ongoing inability to do her work in accordance with the employer's expectations, even though she tried, signaled that she was unlikely to succeed under the action plan, especially after the employer refused to clarify its expectations when she asked.

(7) Claimant concluded she would not be able to complete the plan successfully and would be discharged after 30 days. She did not want a discharge on her employment record. In late November 2018, claimant notified the employer of her intent to resign her job on December 12, 2018, the 30th day of the 30-day action plan, and quit her job on that date.

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) (January 11, 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.

Claimant voluntarily left work because she believed she would be discharged after being placed on a 30-day action plan. The record shows it is more likely than not that on the date claimant quit her job she was facing inevitable discharge. It is also more likely than not that on the date she quit her discharge was imminent. Claimant had tried her best, unsuccessfully, and the only likely way to avoid a discharge was to quit her job.¹ The fact that claimant was likely facing inevitable, imminent discharge, and had no alternatives that would allow her to avoid discharge, is not dispositive in this case, however, without evidence as to what effect a discharge would have on claimant.

In *McDowell v. Employment Department*, 348 Or. 605, 236 P.3d 722 (2010), the claimant had good cause to quit work, in part, because having a discharge on his employment record would be "a kiss of

¹ On this record, claimant's discharge would not have been for misconduct; it appears that her poor work performance was the effect of a lack of job skills or experience rather than willful or wantonly negligent conduct attributable to her as misconduct. See OAR 471-030-0038(1)(c); OAR 471-030-0038(3)(a). Therefore, OAR 471-030-0038(5)(b)(F), which provides that an individual who quits work to avoid a discharge or potential discharge for misconduct, does not apply.

death” to his career prospects. In *Dubrow v. Employment Department*, 242 Or. App. 1, 252 P.3d 857 (2011), however, claimant did not have good cause to quit work, in part because she did not show that she faced dire consequences from a discharge. In *Aguilar v. Employment Department*, 258 Or. App. 453, 310 P.3d 706 (2013), claimant had good cause to quit work, in part because she showed that having a discharge “would seriously hamper her future efforts to find another teaching job.” The question is, then, what effect being discharged was likely to have on this claimant’s career prospects.

Claimant testified that she believed she was going to be discharged from her job could have caused her irreparable harm and made it impossible to find another job. Audio recording at ~ 11:15-11:40. However, when asked why she thought that, she did not describe any particularized harm she would suffer or that was associated with her teaching credentials. Instead, she testified it was because she took her job seriously and thought a discharge would reflect poorly on her, and that potential employers would view a discharge negatively, such that they might see a discharge on her record and reject her application or resume without talking to her about it. Audio recording at ~ 11:50-13:05. Claimant’s testimony was speculative, and described a generalized harm or fear of harm that most discharged individuals experience, and did not substantiate her belief that there would be irreparable harm to her or make it unduly burdensome for her to find another teaching job. Absent evidence that claimant would suffer a particularized harm that was greater than that of most discharged workers, the record does not show that the prospect of a discharge was a grave situation for her, or for individuals in her career field.

Claimant quit work because of an inevitable, imminent discharge not for misconduct, but that was not a grave situation that amounted to good cause for leaving work. Claimant is therefore disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-128865 is affirmed.

J. S. Cromwell and S. Alba;
D. P. Hettle, 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 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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