

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0481

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73300). Claimant filed a timely request for hearing. On May 2, 2019, ALJ Frank conducted a hearing at which the employer failed to appear, and on May 10, 2019 issued Order No. 19-UI-129701, affirming the Department's decision. On May 21, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB has considered claimant's written argument as additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: (1) BigPuppyCurlyPuppy LLC employed claimant as general manager of two sandwich shops from December 17, 2018 until March 21, 2019. The shops were franchises. Claimant worked for the employer's predecessor in interest from September 14, 2016 through December 16, 2018. On December 17, 2018, the owner took control of the employer.

(2) On January 1, 2019, the owner reduced claimant's pay from \$25 to \$18 per hour. The owner initially allowed claimant to work only 35 hours per week and then reduced the hours further. The owner would frequently call claimant about various issues regarding the sandwich shops when she was off work and at home. Employees from the sandwich shops also would call claimant with questions when she was off work. Claimant was not paid for the time she dealt with business matters at home.

(3) During her employment, claimant did not receive sick pay for the hours she was absent due to illness. When claimant took a sick day, the owner would tell claimant that the employer could not afford it and she was hurting him. Audio at ~15:40; EAB Exhibit 1.

(4) During her employment, claimant typically was not able to take meal or rest breaks because there was not sufficient staff available to serve customers if she did. EAB Exhibit 1.

(5) On March 20, 2019, claimant left work early because she was sick and vomiting. Claimant notified the owner that she had gone home sick. Claimant told the owner that she had arranged for the remainder of her shift to be covered and had finished her duties. Despite receiving this notice, the owner emailed and texted claimant at least three or four times while she was at home sick and vomiting. The owner's messages asked claimant to explain why the till at one shop was 44 cents off and why a particular employee had needed to correct as many items as she had when operating the cash register. The messages also notified claimant that an employee had been late to work and that claimant had open shifts on upcoming days. Claimant replied to and dealt with the owner's inquiries despite being ill because she thought the owner expected her to do so.

(6) Early on March 21, 2019, claimant sent the owner a text message notifying him that she was still sick and would not be at work that day. Approximately an hour later, the owner called claimant. The owner told claimant that if an inspection by the corporate office scheduled for March 22 was "anything less than perfect, you will not be having a good day." Audio at ~13:25. Claimant interpreted the owner's comment as threatening her job.

(7) Later on March 21, claimant decided she was going to quit work due to abusive and unlawful working conditions. That day, claimant told the employer she was quitting work immediately.

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

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-129701 concluded that claimant voluntarily left work without good cause. The order found as fact that claimant's principal objections were about the owner's conduct, including sending her communications about work related matters when she was ill and issuing a "vague threat to deprive her of a 'good day' in the event of another poor health inspection." Order No. 19-UI-129701 at 2. The order determined that the matters to which claimant objected did not constitute good cause to leave because they were not "grave." *Id.* The order further determined that, even if gravity had existed, "claimant had the reasonable alternative of simply ignoring the messages until healthy." *Id.* The order is not supported by the evidence and must be reversed.

The employer did not appear to present evidence at the hearing, with the result that claimant's evidence was not controverted. Unless there is a reason in the record to doubt the accuracy of claimant's evidence, it is accepted.

The order under review was incorrect in characterizing claimant's complaints about the owner's behavior and the working conditions as not grave. Claimant's contention that the employer was violating the law when it did not make sick pay available to her when she missed work due to illness is supported by Oregon statutes. *See* ORS 653.606(1), (5)(a), & (13). By expecting claimant to address business matters when she was at home sick, the employer was also acting unreasonably and contrary to the intention of the sick time law, which presumably was to allow an employee to take uninterrupted time away from work to recover from illness. The employer was further engaging in unlawful labor practices by not ensuring that claimant took a meal break after six hours of work and a rest break every four hours. OAR 839-020-0050(2) & (6) (November 30, 2018). As well, when viewed in the context of claimant's explanation, it appears likely that the owner was threatening claimant's job over an inspection as retaliation for exercising her right to take sick time. Audio at ~13:45. A reasonable and prudent person would have concluded that they had to leave work rather than subject themselves to continued unlawful employment practices.

The suggestion in the order that claimant had the reasonable alternative of ignoring the messages until she recovered her health is tantamount to suggesting that she should tolerate behavior that is contrary to the intent of the sick time law. Ignoring the messages also would not rectify the employer's ongoing unlawful employment practices. A reasonable and prudent person would not continue to work indefinitely for an employer who engaged in such unlawful behavior.

DECISION: Order No. 19-UI-129701 is set aside, as outlined above.

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

DATE of Service: June 27, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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