

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0545

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision, concluding that claimant voluntarily quit work without good cause (decision # 95149). Claimant filed a timely request for hearing. On May 14, 2019, ALJ Monroe conducted a hearing, and on May 22, 2019 issued Order No. 19-UI-130424, affirming the Department's decision. On June 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lanier Brugh Corporation employed claimant as a truck driver from March 14, 2017 until March 5, 2019. The employer contracted with the United States Postal Service (USPS) to haul mail. The employer's drivers were awarded routes based on bids.

(2) The employer's drivers were union members. To ensure compliance with the collective bargaining agreement between the employer and the union, the employer followed a progressive disciplinary policy. That policy required that drivers could be subject to discharge only after receiving at least three disciplinary warnings in a year.

(3) On February 25, 2019, claimant notified the employer's dispatcher that he would be absent from work that night. Claimant did not report for his scheduled shift. By letter dated February 26, 2019, the employer issued a written disciplinary warning to claimant. Claimant interpreted the letter to mean that he had not given the employer enough advance notice of his absence. The letter indicated that further disciplinary action would be taken if claimant were involved in similar incidents in the future. This was claimant's first warning in a year. On March 1, 2019, claimant received the warning letter and called the employer's operations manager. In the call, claimant had questions about when and what the employer's dispatcher had reported about his absence. The operations manager told claimant he would speak with the dispatcher and contact claimant.

(4) On March 4, 2019, claimant notified the dispatcher that he would be absent from work that night due to ear pain. No other drivers were available to cover claimant's route. The dispatcher called the operations manager and the operations manager called claimant about his absence. During that call,

claimant asked if he would receive a second warning under the progressive disciplinary process for this absence. The operations manager told claimant that he probably would if he did not report for work. Claimant then asked if this and the February 26 warnings would be rescinded if he brought in a doctor's note. The manager did not give claimant a definite answer, but said they would talk about it further when he brought in doctor's notes. Claimant then said he would get doctor's notes and the conversation ended.

(5) On March 5, 2019, claimant called the operations manager and asked for a final check. Claimant told the manager that he was quitting work.

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

Claimant testified that he quit work because during the March 4 conversation, the operations manager told him "... if you don't come to work you're going to get fired, so I suggest you should just quit so it looks better in your resume for the next employment". Transcript at 6. The operations manager denied having threatened claimant with discharge, and testified that on March 5 claimant requested his final check and affirmed that he was quitting. Transcript at 21, 22. Accordingly, the first issue this case presents is 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).

The testimony of claimant and the employer about the work separation is irreconcilable. However, claimant did not dispute that the employer was obliged to follow its progressive disciplinary policy to comply with the collective bargaining agreement. During the hearing, the operations manager testified he would not have told claimant that the employer was going to fire or terminate claimant because "it gets everybody in a lot of trouble," presumably unless a work separation is called for under the progressive disciplinary policy and the collective bargaining agreement given the protections available for union members. Transcript at 22.

In determining the respective reliability of claimant and the operations manager about the work separation, on this record it is more plausible that the employer would abide by the requirements of the disciplinary policy and the collective bargaining agreement in communications and circumstances surrounding the work separation than that it would not. The preponderance of the evidence supports the conclusion that continued work was available for claimant. Transcript at 22, 23. Claimant's work separation was a voluntary leaving on March 5, 2019 when he informed the employer that he was quitting.

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.

Because claimant contended that he did not quit work voluntarily, he did not provide reasons for doing so. However, on this record, claimant may have thought it was unfair that the employer would issue a warning to him for being absent on March 4, 2019 or that the issuance of such a warning would lead to his discharge. If so, the evidence did not show that his circumstances likely would be grave as a result. Under the progressive disciplinary policy, claimant was not subject to discharge for the March 4 absence. Claimant also did not rule out the employer would rescind the February 26 warning and any warning it issued for the absence on March 4 if he submitted doctor's notes for those absences.

With respect to other reasons that may have motivated claimant to leave work, the record does not show that such reason(s) likely would have caused a reasonable and prudent person to leave work. On this record, claimant did not meet his burden to show good cause for leaving work when he did.

Claimant did not meet his burden to show good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-130424 is affirmed.

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

DATE of Service: July 18, 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ ប៉ុន្តែវាជាភារកិច្ចរបស់អ្នកប្រើប្រាស់។ បើសិនជាអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Arabic

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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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