

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0569

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 154232). Claimant filed a timely request for hearing. On June 11, 2019, ALJ Snyder conducted a hearing, and on June 19, 2019 issued Order No. 19-UI-131941, affirming the Department's decision. On June 22, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) McLoughlin Chevrolet employed claimant as a sales consultant from July 2014 until April 22, 2019.

(2) Around October 2018, claimant noticed that managers had become rude, yelled, and routinely used foul and degrading language and insulted employees by referring to them as "stupid" and "dumb." Transcript at 9. Managers belittled employees by asking them if they knew what they were doing, and threatened to fire employees or reduce their pay. The managers' behavior worsened as time passed.

(3) Around February 2019, claimant complained about the managers' behavior to the employer's general manager. Despite claimant's complaints, the managers' behavior continued. Claimant did not make a complaint using the employer's online human resources because he thought it was more efficient to notify the general manager directly, and that online complaints eventually would reach him.

(4) The employer had a policy that no weapons were allowed at work. On a couple of occasions after the general sales manager drove a demo car claimant had to ask the manager to remove his concealed weapon from the car so he could show it to customers. Claimant told the manager, "Okay, well, it's in the car is not supposed to be, but it's in the car." Transcript at 6.

(5) On another occasion, the finance manager called claimant into his office to show claimant the loaded handgun he was carrying in a hip holster, and stated that he had a permit to carry a concealed weapon. Claimant said, "What the fuck are you doing with this pistol?" Transcript at 7. The new car manager came over to the finance manager's office and said, "What's going on?" *Id.* Claimant said, "This guy is

carrying a concealed loaded pistol on his hip. What is going on?” *Id.* The new car manager told the finance manager, “Get that thing out of here and go put it in the car.” *Id.*

(6) A few weeks later, claimant observed the general sales manager in the sales office showing his handgun to two other managers. The presence of handguns in the workplace made claimant feel unsafe. Claimant did not think it would do any good to complain about the guns to higher level management because his previous complaints about managers being hostile had not changed anything.

(7) On August 22, 2019, claimant notified the employer that he was leaving work. Claimant decided to leave work because of how management treated him and because the presence of guns in the workplace made him feel unsafe.

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-131941 concluded that claimant quit because of a grave situation, specifically, his feelings that he was not safe at work because of the “angry and aggressive behavior exhibited by the managers” and because two managers brought guns to work. Order No. 19-UI-131941 at 2. However, the order also concluded claimant left work without good cause because he had reasonable alternatives, specifically, complaining to the general manager about the weapons, and submitting complaints to the online human resources system. *Id.* While the record shows that those were alternatives claimant had to quitting work, the record does not support the conclusion that pursuing those alternatives was reasonable.

Complaining to the general manager, or another manager, was not reasonable because the managers themselves were the ones creating the unsafe workplace by “getting really short, screaming, cussing, degrading” and name-calling, and that it was “continuing getting worse and worse and worse.” Transcript at 6, 9. The managers themselves were also the ones bringing guns into the work environment, including a general sales manager and the finance manager, who displayed weapons or loaded weapons in the workplace to claimant and two other managers. Transcript at 6-7. Claimant and the new car manager had told both managers that they were not allowed to have guns at work, but neither changed their behavior. Furthermore, as claimant explained, “These people are the Managers themselves. They’re supposed to follow the rules and the regulations of the company policies.” Transcript at 8. Given that, and that his previous expression of concern about workplace hostility to the general manager had not been addressed, it is more likely than not that complaining to management would have been futile, and therefore not a reasonable alternative to quitting work.

Likewise, submitting an online complaint to human resources was not a reasonable alternative to quitting work under the circumstances. The employer's witness testified, "we have that employee go into [the online system] and write down exactly what the issue was, that way it's noted, it's documented. And then we get all the people involved in my office with my Office Manager and we review the prob – review the problem and we get it resolved. And at the end everyone will sign off that they're either happy with the results or they're not happy with the results. If they're not, we'll continue the conversation until it does get corrected." Transcript at 17-18. However, all four of the individuals involved with weapons in the workplace – the two individuals who repeatedly brought their guns, including a loaded gun, into the workplace or left them in cars and the two other managers who were shown the guns – were management, all of whom were supposed to know and follow the employer's policies prohibiting weapons in the workplace. Claimant and another manager had fruitlessly told the managers not to bring their guns to work. Given that managers were involved in the situation, and the fruitless prior attempts by claimant and a manager to affect their behavior, there is little to suggest that "get[ting] all the people involved in my office with my Office Manager" was likely to have a different outcome. On this record, it is more likely than not that logging a complaint into the online complaint system was futile, and therefore not a reasonable alternative to quitting work.

Claimant left work because of a grave situation that left him without reasonable alternatives to leaving work to protect his safety. Claimant therefore left work with good cause, and he is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-131941 is set aside, as outlined above.

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

DATE of Service: July 30, 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 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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