

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0571

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 110057). Claimant filed a timely request for hearing. On May 31, 2019, ALJ Janzen conducted a hearing, and on June 5, 2019 issued Order No 19-UI-131067, 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) Quality Automotive Northwest Inc. employed claimant as a tow truck driver from February 24, 2018 until April 14, 2019.

(2) The employer provided towing services for AAA members in Oregon and Washington. Tow drivers received their AAA assignments by way of a computer tablet. Claimant often took one of the employer's tow trucks and tablets home so she could start work performing tows without first reporting to the employer's shop. Claimant understood that the employer expected her to begin working at the time scheduled.

(3) Claimant's work shift usually began at 7:00 a.m. Sometime before Wednesday, April 10, 2019, claimant requested to have that Wednesday off. The employer agreed and notified claimant it was scheduling her to work on Sunday, April 14, 2019 to make up for the day off. Claimant did not usually work on Sundays.

(4) On April 14, 2019, claimant forgot she was to work that day and did not start work at 7:00 a.m., as scheduled. The employer's owner tried unsuccessfully to contact claimant several times to determine her whereabouts beginning shortly after 7:00 a.m. At 11:00 a.m., the owner sent claimant a text message stating that she was expected to begin work that day by logging in on her tablet at 7:00 a.m., but had not done so. The message went on to state, "You are holding my truck and my tablet. I'm holding calls which I can't run without your truck. You're costing this company money. Either log in now or bring my equipment in. Thank you." Transcript at 17. Claimant did not immediately access this message because at the time it was sent she still had not remembered that she was scheduled to work that day.

(5) Sometime around noon, claimant remembered that she was scheduled to work that day, logged in on her tablet and intended to begin responding to calls. At 1:37 p.m., the owner texted claimant, "Hello. I need my truck and tablet back ASAP." Transcript at 17. Three hours later, at 4:39 p.m., claimant responded to the owner's message, "Okay. Dropping it off now." *Id.* The owner replied, "Now? I don't need it now. Stay logged in if you're going to work. Do your work and then call me." *Id.* Claimant responded, "Cleaning out the truck. I'll be there in 30 minutes." *Id.* The owner texted claimant back, "Call me now." Transcript at 18.

(6) Rather than calling the owner, claimant sent the owner another text commenting, among other things, about a fuel reimbursement check that she thought she should have received by that time, the hours that she worked, her work ethic and the poor maintenance of the tow truck. Claimant's message went on to state, "I'll go break my back for another company that appreciate[s] it. I want my fuel reimbursement check separate than [sic] my paycheck. Taxes shouldn't be taken out of it." Transcript at 19. The owner sent claimant a lengthy message in reply detailing what he considered to be problems with claimant's work performance. That message also stated, in part, "I should go on, but if you decide you want to work[,] I am not playing anymore of your nor anyone else's games. Please stop making false statement and accusations. . . ." Transcript at 20. The message concluded, "However, if you are working for and with us, rules must be followed. Have a nice afternoon. We cannot afford to lose any calls. . . ." *Id.*

(7) Claimant did not return to work after April 14, 2019.

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

Claimant testified that she was discharged when the owner told her to bring in the tow truck and the tablet that she had on April 14, 2019. Transcript at 5, 6. The employer testified that claimant voluntarily left work and the owner did not discharge her. Transcript at 13-14. OAR 471-030-0038(2) (December 23, 2018) sets out how to characterize 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 statements the owner made to claimant in the April 14, 2019 texts did not contain clear language of discharge. Claimant did not contend that the owner said she was fired, terminated, laid off, discharged or the like. Although the owner asked claimant to bring in the truck and tablet, the employer's testimony that he did so because both were needed if other employees were to respond to calls that day is plausible and fits within the context of his other texts to claimant from that day. That the owner's intention to not discharge claimant is corroborated by his response to claimant's 4:39 p.m. text, withdrawing his request that claimant bring in the truck and tablet, which he reasonably would not have done if he had discharged claimant. At best, the owner's initial request to claimant that she bring in the truck and the tablet was an ambiguous expression of an intention with respect to the work relationship, and was not reasonably interpreted by claimant as showing that the employer was not willing to continue to allow her to work. Claimant was the first party to objectively manifest an unequivocal intention about the work relationship, when she did not return to work after April 14, 2019. Claimant's work separation was a voluntary leaving on April 14, 2019.

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.

Claimant left work because she mistakenly thought that the owner had discharged her on April 14, 2019. However, a reasonable and prudent person, exercising ordinary common sense, would not have interpreted the owner’s ambiguous April 14, 2019 text messages as discharging her without first clarifying that was actually was the owner’s intended meaning. Because claimant did not make the inquiry that a reasonable and prudent person would have, claimant did not meet her burden to show good cause for leaving work when she did. Claimant is therefore disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-131067 is affirmed.

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

DATE of Service: July 26, 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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