

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0638

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits effective April 14, 2019 (decision # 142847). Claimant filed a timely request for hearing. On June 21, 2019, ALJ Jarry conducted a hearing, and on June 25, 2019 issued Order No. 19-UI-132250, affirming the Department's decision. On July 9, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Black Butte Ranch Corporation employed claimant, last as office manager for operations and maintenance, from April 16, 2006 to April 18, 2019.

(2) In 2017, claimant began to have concerns about her manager because he failed to do her performance evaluation on time. Claimant reported the concern to the human resources director, and the director resolved the issue by working with the manager to complete the evaluation. Claimant received a pay increase as a result of the evaluation, and the director got claimant paid back pay.

(3) Thereafter, claimant had ongoing concerns about her manager. She found him rude and had witnessed him become physical with another employee, and thought the manager was avoiding her and isolating her from other employees, perhaps in retaliation. Claimant periodically spoke with the human resources director about the manager, and the director tried to work with claimant and the manager to resolve their concerns. After claimant refused an invitation to sit down with the manager to work through their issues, the director invited claimant to return if she had other problems with the manager. Claimant told the director that she felt the employer had addressed her concerns.

(4) In 2017 or 2018, a male coworker made inappropriate remarks to claimant related to knee pads that implied that she had performed oral sex for her manager. Claimant complained to the human resources director but indicated that she did not want the coworker to lose his job or get into trouble. The director investigated, substantiated claimant's complaint, and, at claimant's request, the male coworker

apologized to claimant. The director counseled the male coworker about the incident and reminded him about the employer's policy prohibiting sexual harassment.

(5) Between 2018 and February, 2019, claimant experienced additional incidents of sexual harassment, sexually aggressive remarks, or other inappropriate behavior in the workplace. The incidents included questioning claimant about sex acts and her breasts, references to a male coworker's penis, remarks after claimant changed her clothing while in her own locked office, and comments about her attire and body.

(6) Claimant felt offended and harassed by each of those incidents. She began to feel anxiety about her working conditions. By approximately February 2019, claimant began to wake up feeling sick on workdays, with headaches and an upset stomach. She did not report the incidents or the coworkers responsible for them to the human resources director, nor did she report her symptoms of anxiety.

(7) On April 1, 2019, a male coworker wearing latex gloves made a remark with an implied reference to a gynecological or rectal exam. On April 16, 2019, a male coworker made a sexist remark to claimant, indicating that she could not refuse to come to his office because he was a man and she was a woman. Claimant felt offended and harassed by both remarks.

(8) Claimant decided to quit her job because of the effect the work environment was having on her. On April 18, 2019, claimant went to the workplace to drop off her belongings, and, at that time, spoke with the human resources director. She told the director that she was resigning and put her keys and card on the desk. The director was aware of ongoing difficulties between claimant and her manager, but felt surprised that claimant was resigning and asked claimant what happened. Claimant explained to the director that she had been sexually harassed and felt that the workplace was hostile, and provided some details when the director asked for them. The director asked why claimant had not come to her before, and claimant responded that she had not because nothing would be done about it.

(9) The director told claimant that she would accept the resignation, but asked claimant to think about her decision and let the director investigate. The director told claimant she would investigate that day and call claimant the following morning. The director investigated, and corrected at least one individual about his behavior. On April 19, 2019, the director called claimant and left a voicemail for her. Claimant did not return the director's call, and did not return to work after April 18, 2019.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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.

The incidents claimant described involving sexual harassment, sexually aggressive conduct, and other inappropriate remarks, more likely than not, amounted to a grave situation for claimant. Claimant's

description suggests a work environment in which she repeatedly experienced harassment, sexually aggressive behavior, and other inappropriate behavior. The question remains, however, whether any reasonable and prudent person in that situation would consider those conditions so grave that they had no reasonable alternative but to quit work because of them.

Claimant argued that she had no reasonable alternative to quit work because it would have been futile for her to complain to the employer about the working conditions. Claimant alleged that the employer disregarded her previous complaints. For instance, she testified that her complaints about her manager pushing another employee “were unheard” and “[n]othing happened.” Transcript at 13. She testified that other complaints were “completely swept under the rug,” that the employer did not investigate them, that she was “not being taken seriously,” and that the human resources director had once told her she was a “pretty crier” when she complained. Transcript at 10.

The preponderance of the evidence does not, however, support claimant’s testimony that the employer disregarded her complaints. Although the human resources director did not necessarily share the details of disciplinary actions toward other employees, she did ultimately take action to correct other employees’ behavior after claimant complained. The director helped resolve claimant’s complaints about her performance evaluation and ensured claimant received her back pay. The director addressed claimant’s complaints about her manager and offered to help them resolve their differences by meeting with each other, but claimant refused. The director then told claimant to come back if she had additional complaints. The director investigated the “knee pad” incident, reminded the employee about the sexual harassment policy, and caused the employee to apologize as claimant had asked but, also at claimant’s request, the employee did not lose his job or get into trouble.

The director did not address or resolve claimant’s other concerns about harassment, but the record fails to show that claimant complained to the director about those incidents or gave her an opportunity to resolve them. Notably, when claimant told the director she resigned the director did not simply accept claimant’s resignation, she accepted it conditionally but asked claimant to reconsider her decision and give the director time to investigate claimant’s complaints of sexual harassment and hostility. The director then began an investigation, which included correcting at least one employee’s behavior, and called claimant as promised on April 19th.

The director’s request that claimant think about resigning, and the director’s demonstrated willingness to investigate and resolve claimant’s complaints, both in the past and after claimant submitted a resignation, suggests that it would not have been futile for claimant to report the sexual harassment and hostility prior to quitting. Rather, reporting her concerns to the director prior to quitting and allowing the director to investigate and potentially resolve the problems was a reasonable alternative to quitting under the circumstances claimant described. Because claimant had a reasonable alternative to quitting work, she did not establish good cause. Claimant therefore voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-132250 is affirmed.

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

DATE of Service: August 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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 الإستئناف 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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