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

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0743

*Reversed
No Disqualification*

PROCEDURAL HISTORY: On July 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause and was disqualified from benefits effective May 19, 2019 (decision # 141432). Claimant filed a timely request for hearing. On July 26, 2019, ALJ Wyatt conducted a hearing, and on August 2, 2019 issued Order No. 19-UI-134417, affirming the Department's decision. On August 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTERS: The record in this case was not fully developed because the ALJ did not ask sufficient questions to ascertain the extent of the problems claimant had at work or the effect those conditions had upon his physical and mental health.¹ Ordinarily, such an omission would require remand. However, sufficient information from other sources in this record makes remand unnecessary. EAB therefore has considered additional evidence when reaching this decision to complete the record. See OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's August 20, 2019 written argument, which has been marked as EAB Exhibit 1, and claimant's July 9, 2019 request for hearing, which has been marked as EAB Exhibit 2. A copy of each exhibit has been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibits will remain in the record.

FINDINGS OF FACT: (1) Wal Mart Associates employed claimant, last as a service writer, from early 2008 to May 24, 2019.

¹ ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986).

(2) Since late 2018, claimant regularly worked with an associate who frequently made errors that caused customers to become upset and yell. When that happened, the associate walked away, leaving the customers to yell at claimant and other employees who were trying to fix the associate's mistakes.

(3) The associate also told claimant to "shut up" numerous times. Audio recording at 15:00. The associate would scream at claimant from behind a window to come to her area, and when he did so, she would just leave on a break. On one or two occasions she called claimant a derogatory name loud enough that customers and other employees heard it. On one occasion the associate walked behind claimant and said, "Don't worry, I'm not going to grab your ass."²

(4) Claimant and other employees complained to their managers and upper management about the associate. Customers submitted complaints about the associate. Claimant worked with personnel and management trying to get them to transfer the associate out of the automotive department, but that did not happen. Claimant spoke with human resources about the associate, but was told that he had to go through chain of command, not human resources. The associate had physically pushed one human resources employee, who also filed a complaint about the associate. The associate's behavior did not change as a result of the complaints.

(5) The associate had also shoved another automotive department employee, who became afraid of the associate; management talked to the associate as a result of the complaint, but the associate continued to be rude to the employee.³ The associate threw things while in the back room, and became angry at another employee who was on a lunch break for refusing to help her "NOW."⁴ On her first day in the automotive department, the associate yelled at a co-manager.⁵ Employees complained to management about the associate most days, but nothing changed the associate's behavior.⁶

(6) In early May 2019, claimant complained to a manager about the associate again. He told the manager if they could not do something about the associate soon, claimant would have to leave or transfer to a different store. The associate's behavior did not change after that point. Claimant thought about requesting a transfer to a different department or store, but he knew it would take two to three months to complete a transfer, and knew he could not continue working with the associate for that period of time. Claimant experienced nightmares at night thinking about having to come to work. Claimant's working conditions were taking a toll on his mental and physical health.

(7) On May 23, 2019, claimant asked the associate to check a customer's order for him. The associate refused. Claimant asked again and said he really needed the information. The associate responded, "Go fuck yourself!" and walked away.⁷

(8) On May 24, 2019, claimant reported to work intending to work his entire shift and maintain his employment. The associate made two errors with customers' work orders that claimant and his coworkers had to fix. Claimant met with two managers about the associate and told them how the

² EAB Exhibit 1.

³ EAB Exhibit 1.

⁴ *Id.*

⁵ EAB Exhibit 2.

⁶ *Id.*

⁷ EAB Exhibit 1.

associate's behavior had affected customers and coworkers that day. Because the associate had not done anything to claimant personally, the managers refused to take claimant's complaints or do anything to correct the associate's behavior toward others. Claimant felt that the associate was allowed to get away with anything, including pushing the other employee, and nothing would be done. He could not tolerate the associate's behavior any longer, and, effective immediately, quit his job.

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.

The order under review concluded that claimant quit work without good cause. The order recited that claimant was dissatisfied with management's response to his complaints about an associate and felt they would not take any action, had considered transferring but it would take too long, and felt the working conditions were taking a toll on his health but did not seek medical attention.⁸ However, the order did nothing to explain why the circumstances claimant described at the hearing and in his request for hearing were not grave, or why taking several months to transfer while experiencing physical and mental health issues and nightmares about work should be considered a reasonable alternative to quitting when he did. Nor would the record support such conclusions.

The preponderance of the evidence established that claimant had good cause to quit work. Claimant's associate regularly engaged in verbally abusive behavior toward claimant, including telling him to "shut up," screaming at him, making inappropriate comments in front of others, and telling him to "go fuck yourself." The associate engaged in physically abusive behavior on two occasions by pushing one employee and shoving another. The associate also engaged in behavior that resulted in customers yelling at claimant and others. Claimant complained to all levels of management about the associate, and to human resources, and tried to get the associate transferred to another department, but his efforts did nothing to change the associate's behavior, and the associate continued to be verbally abusive the day before claimant left, and to engage in other poor behavior on the day he left. The situation was grave.

No reasonable and prudent person under the circumstances would have any reason to believe that further complaints to management would affect or change the associate's behavior. No reasonable and prudent person would consider engaging in a two to three month-long transfer process a reasonable alternative when doing so would mean continuing to work with the abusive associate throughout that time. No reasonable and prudent person would continue to work with an abusive coworker whose behavior went essentially unchecked by management despite months of customer and employee complaints. On this record, claimant did not have any reasonable alternative but to quit his job when he did.

⁸ Order No. 19-UI-134417 at 2.

Claimant voluntarily left work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-134417 is set aside, as outlined above.

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

DATE of Service: September 13, 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 Tự 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

Laotian

ເອົາໃຈໄສ – ຄໍາຕັດສິນນີ້ມີຜົນກະທິບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນຫັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຢືນຄໍາຮ້ອງຂໍການທີບຫວຸນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢ່າງຍໍາຍໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطلة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمرجعية القانونية بمحكمة الاستئناف بأورغون وذلك باتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می‌گذارد. اگر با این تصمیم موافق نیستید، بلافصله با هیأت فرامخواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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