

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0745

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 12, 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 benefits effective February 10, 2019 (decision # 65530). Claimant filed a timely request for hearing. On July 29 and August 1, 2019, ALJ Scott conducted a hearing, and on August 5, 2019 issued Order No. 19-UI-134514, affirming the Department's decision. On August 8, 2019, claimant filed a timely application for review of Order No. 19-IU-134515 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kaiser Foundation Health employed claimant as a palliative care nurse practitioner from May 22, 2017 to February 15, 2019. Claimant was new to the field when she began the job.

(2) Claimant's working conditions were difficult and became more difficult over time. Claimant's supervisor frequently criticized claimant's work in a way claimant felt was inconsistent with her own view of her work and inconsistent with the direct feedback she received from others. Claimant's supervisor described claimant's behavior to her, but did not give her examples or instances in which she had modeled the behavior, leaving claimant confused about what she was doing wrong or how to change her behavior.

(3) By mid-2018, claimant's workload had grown to the extent that she frequently had to work very late into the night and on her days off to complete her tasks. The medical director told claimant it was "gonna be harder" going forward. August 1, 2019 hearing, Transcript at 18. Claimant developed shingles, which she was told was stress-related; claimant tried to call off work or work from home, but instead was assigned to cover for the entire team.

(4) Claimant's supervisor required claimant to attend frequent meetings during which she criticized claimant's work. Claimant's supervisor told claimant she was "passive aggressive," and said "you had such wonderful references. Why aren't you like that here." August 1, 2019 hearing, Transcript at 9.

(5) In late-2018, claimant was required to pass a very difficult test with a low pass rate as a condition of keeping her job. When she asked to have designated work time to study the supervisor rejected claimant's request. Over time, claimant became "overwhelmed" by her workload "with more and more new tasks enforced upon" her. August 1, 2019 hearing, Transcript at 9. Claimant was criticized for not doing video visits, which had never been required, while her colleague, who did his job similarly to claimant, was praised for his work.

(6) A medical director at the employer's business had advised claimant to complain daily to the union about her working conditions. Claimant consulted with a counselor about her situation, and the counselor said he was concerned that claimant was facing burnout and potential major depression if things did not change.

(7) By January 2019 claimant felt exhausted. The employer had released two of claimant's nurse practitioner colleagues and claimant had too much work. She was required to work unpaid hours. She became concerned that she was so exhausted that she was going to make a mistake that would negatively affect a patient. In that context, claimant was told by a colleague that the supervisor had made disparaging remarks about the state of her mental health to coworkers. Claimant was unable to meet the existing performance measures and made suggestions about changing some processes in a way that she thought would help her meet them; claimant's supervisor rejected the suggestions and told her that she had to continue meeting the existing performance measures without changing anything. Claimant concluded at that time that her working conditions were not going to change or improve, and, effective February 15, 2019, quit her 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 reasoned that while claimant had alleged her supervisor engaged in "bullying" the record was insufficient to support a conclusion that she had been. Order No. 19-UI-134514 at 3-4. That conclusion is supported by the record. While claimant disliked her supervisor's frequent criticisms of her work and felt the standard to which the supervisor held her differed from that to which she held others, and some of the supervisor's criticisms were inappropriately personal, the record does not show that the supervisor bullied claimant, or that the supervisor's treatment of claimant in and of itself created a grave situation.

However, the order also reasoned that claimant quit work without good cause because, while her workload was "challenging" and she was concerned that she would make a mistake, that condition began in mid-2018, and claimant continued to work for several more months, which "indicates" that the situation was not grave. *Id.* at 4. The order also stated that claimant's testimony about the severity of the

workload was contradicted by the employer's evidence, and therefore the record failed to show that the workload really was as heavy as claimant claimed. *Id.* The record does not support that conclusion.

The supervisor testified that claimant was not paid for documentation she performed after hours or on the weekends, and, while she did testify that she could not require claimant to work on a scheduled day off, she also did not dispute that claimant's workload was such that she frequently had to work late at night and on her days off in order to complete her work within the timeframes the employer required. August 1, 2019 hearing, Transcript at 28-29. There was no other evidence submitted into the record suggesting that claimant did not actually work the hours she claimed to have worked. The record therefore shows it is more likely than not that claimant frequently worked late and on her days off to complete her duties.

Claimant's testimony about the effect her workload and hours had on her is undisputed. Claimant experienced anxiety and increasing stress levels that necessitated she consult a counselor; the counselor advised claimant that she was facing burnout and major depression if she did not change her working conditions. She grew increasingly concerned that she would make mistakes affecting patients if she continued to work under the same conditions. The fact that claimant had been able to tolerate the workload and hours for a few months does not negate claimant's testimony that her ability to tolerate those conditions lessened over time. As a matter of common sense, most individuals are able to tolerate extended work hours and increased stress for short periods of time, but the human experience also suggests that the longer such conditions persist, the less individuals are able to tolerate them.

In sum, claimant's workload necessitated that she work late and on her days off to complete her duties. On this record, the workload and staffing situation at the employer were such that claimant's work hours were unlikely to change, and had actually grown worse over time. Claimant was unable to cope with those conditions any longer, reasonably concluded that the conditions would change no matter what she did, and she was exhausted and facing burnout and depression. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working under those circumstances. Claimant therefore left work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-134514 is set aside, as outlined above.

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

DATE of Service: September 12, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.