

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0752

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155928). Claimant filed a timely request for hearing. On July 29, 2019, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on August 6, 2019, issued Order No. 19-UI-134536, affirming the Department's decision. On August 9, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB on his application for review. EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Home Instead Senior Care employed claimant from May 1, 2019 until June 7, 2019 as a care coordinator.

(2) There were about thirteen employees at claimant's workplace. The employer's owner and agency manager were claimant's supervisors. Shortly after he began working for the employer, claimant began to feel "very uncomfortable" at work because the employer held potlucks at lunchtime and business meetings during work hours during which all staff were "led in prayer" by the employer's owner. Transcript at 13. Although the potlucks were not mandatory, all the staff members attended. During the business meetings, the owner told staff that it was helpful to be "really devout in our faith" caring for elderly people, many of whom were in hospice care. Transcript at 14. Claimant's superiors never told him the business meetings were optional. Transcript at 13.

(3) During his first week of work, claimant rode with a coworker to do his first home visit with a client. During the car ride, the coworker pointed to a church, told claimant that it was her church, and spoke to claimant about religion. She asked claimant if he attended church, and claimant changed the topic of conversation.

(4) Claimant noticed that the agency manager wore “a big cross every day.” Transcript at 17. She told claimant that working for the employer was something she did “to serve God.” Transcript at 18

(5) Almost daily, claimant’s superiors talked about how staff needed to improve as employees “and improve as persons.” Transcript at 14. Staff were instructed to write down on white boards at their cubicles how they would improve as employees and as people. Claimant was told to write down how he planned to “be a better person.” Transcript at 25. The supervisors walked around and looked at the boards, and encouraged staff who did not have much written on their boards to write more. Claimant tried to participate and wrote two things on the board, but noticed the next day that someone had erased what he wrote. The owner gave claimant a journal and instructed him frequently to write in the journal about, “how [he was] going to be a better person and improve.” *Id.* Claimant felt the employer’s self-improvement methods had a religious tone and were “demeaning,” and they caused claimant to feel “intimidated” and “demoralized.” Transcript at 15, 26.

(6) Employees in the office would “openly” discuss God and religion “pretty consistently.” Transcript at 24.

(7) Claimant had to participate in “intimidating” church experiences as a “very young child.” Transcript at 22. His experiences affected him in a negative way and made him feel “not comfortable” discussing religion with the employer. *Id.*

(8) Claimant did not discuss his discomfort with the prayer and discussion about religion with his superiors because all but one of the other employees participated in the prayers, and he felt that the “religious culture” in the workplace was long-term and a complaint from a new employee would not change it. Transcript at 20.

(9) Claimant worked more than 40 hours per week, but usually had no rest or meal breaks. When he did have meal breaks, they were ten minutes long. Other staff were able to put appointments on claimant’s calendar, and his calendar would become full with no time for rest or meal breaks. One day, claimant worked 10.75 hours without a rest or meal break.

(10) Claimant asked the other care coordinators about their work schedules. One told claimant she worked 50 to 55 hours per week. The other told claimant she worked more than 40 hours per week. Claimant did not believe the employer would improve his schedule, or otherwise allow him to take breaks, if he discussed his lack of breaks with the employer.

(11) Claimant experienced stress from his working conditions that prevented him from sleeping at night, and caused him to experience nightmares. Claimant felt tired when he reported to work each day due to his inability to sleep at night. Claimant felt that his workplace was “not an environment that [he] would ever feel comfortable in.” Transcript at 37. He felt “too uncomfortable and stressed” at work to continue working for the employer. *Id.*

(12) On June 7, 2019, claimant quit work because he felt overwhelmed and “really stressed out” by the religious practice and references and the lack of breaks at work, and how those conditions affected his health. Transcript at 16. Claimant felt “so uncomfortable there that [he] didn’t even want to talk to them

about it. And so [he] waited ‘til everybody was gone,” and left a note for the owner stating that he quit. Transcript at 15.

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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Order No. 19-UI-134536 concluded that claimant did not face a grave situation at work because the record did not show that the employer required or pressured claimant to pray, attend church, or change his beliefs, or that it would retaliate against him if he complained about his working conditions.¹ The order concluded that claimant did not have good cause to quit work because claimant’s working conditions and health concerns were not so grave that no reasonable person would have continued to work for their employer rather than continuing to work while looking for other work or seeking medical treatment for work-related stress.² The order does not address whether claimant had good cause to quit work due to the lack of meal and rest breaks.

Claimant left work in part because he often did not have rest or meal breaks despite working more than 40 hours per week. OAR 839-020-0050(2)(a) (July 19, 2018) provides that an employer must, for each work period of between six to eight hours, provide to an employee a meal break of thirty continuous minutes “during which the employee is relieved of all duties.” OAR 839-0200050(6)(a) states that an employer must, for each four hour segment of work, provide an employee a rest period of not less than ten minutes “during which the employee is relieved of all duties.” While there are certain narrow exceptions to the break requirement, there is insufficient evidence in the record to support the applicability of these exceptions to claimant’s work situation. *See* OAR 839-020-0050(3), (4), (5), (6)(b), (7).

Although the record shows that claimant often did not have adequate meal or rest breaks, claimant did not meet his burden to show that he had good cause to leave work when he did for that reason. The record does not show that the employer knew about claimant’s lack of breaks, or that it would permit the problem to persist if it were aware of it. Claimant asserted that he did not tell the owner about the lack of breaks because he did not want to be “the only one complaining.” Transcript at 29. However, the record does not show that the employer would have preferred not to know about the lack of breaks, or that it likely would engage in any type of adverse employment action against claimant if he complained.

¹ Order No. 19-UI-134536 at 3.

² *Id.*

Therefore, the record does not show that it would be futile to attempt to remedy the lack of breaks by complaining to the employer. Therefore, to the extent claimant left work due to a lack of breaks, claimant failed to demonstrate that he faced a grave situation that left him no reasonable alternative but to quit work when he did because he had the reasonable alternative of quitting.

Claimant quit work, in part, because the “religious culture” in claimant’s workplace affected his mental health such that he felt “really stressed,” “uncomfortable,” “demoralized” and “intimidated” at work, and experienced sleeplessness and nightmares due to work stress when he was not at work. The undisputed record shows that generally the employees in the workplace prayed and “openly” and “consistently” discussed their religious observance, and that prayer and faith-based personal development was promoted at work. The work environment described by claimant that caused him to quit created a grave situation for claimant. The record does not contain evidence of alternatives to quitting that may have been available to claimant. Both the owner and claimant’s supervisor engaged in the religious conduct at work by leading prayer during work meetings, discussing religious motivation for the employees’ work, and promoting personal reflection that claimant found to be of a religious nature. For these reasons, discussing his discomfort with the working environment likely would have been a futile alternative to quitting. For that reason, we conclude that claimant’s working conditions posed a situation of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time. Claimant voluntarily left work with good cause.

Claimant is not disqualified from unemployment insurance benefits based on this work separation.

DECISION: Order No. 19-UI-134536 is set aside, as outlined above.

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

DATE of Service: September 16, 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 desisyong ito.

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

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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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