EO: 200
BYE: 202021

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-0785

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 21, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122216). Claimant filed a timely request for hearing. On July 24, 2019, ALJ Frank conducted a hearing at which the employer did not appear, and on August 1, 2019, issued Order No. 19-UI-134370, affirming the Department's decision. On August 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Loves Travel Stops employed claimant from August 9, 2018 to May 28, 2019.

(2) On August 9, 2018, the employer opened a new location with a store and a fast food sandwich restaurant, where it employed claimant in the restaurant. Claimant received limited training at that time. In December 2018, the employer hired a new restaurant manager to replace the previous manager. The new manager told claimant that he had not been trained properly, and needed to complete the employer's training modules.

(3) In December 2018, the employer promoted claimant to a supervisory position, as a shift leader. There were multiple training topics and certifications claimant was supposed to complete for his position, including how to perform the different restaurant "front line" positions, shift lead training, and certification to use the restaurant slicer. Audio Record at 11:26. A team trainer was supposed to train the employees on claimant's shift about how to perform their positions safely and efficiently.

(4) On one occasion in March 2019, claimant needed to provide meal breaks for the employees on his shift, but was not able to do so unless a manager covered the employees' positions while they took meal breaks. Claimant closed the drive-through window at the restaurant so that the employees were able to take meal breaks. Claimant later "got in trouble" for having closed the drive-through window and the employer told him it expected him to refrain from closing the drive-through window. Audio Record at 19:50.

(5) By May 2019, the employer had provided claimant with less than half the "front line" training claimant expected to receive, and no shift leader training.

(6) During May 2019, claimant was "getting in trouble" with his manager, and customers were "getting mad at" claimant because claimant and his shift employees did not prepare customers' orders as fast they wanted them to. Audio Record at 18:16, 18:28.

(7) During 2019, claimant had two different managers. He complained to them both repeatedly that he and his shift employees did not receive adequate training to be able to perform their positions safely and efficiently. Claimant also complained to the general manager at the location where he worked.

(8) Sometime before May 28, 2019, the restaurant manager told claimant that he should call her if he needed a manager to cover meal breaks for the employees on claimant's shift. On May 28, 2019, there was no manager on site, at the store or the restaurant, who could perform the restaurant employees' duties so they could take meal breaks. Claimant was also the only employee on his shift permitted to use the slicer because the other employees were minors. Claimant could not cover for all the meal breaks and complete his duties, including operating the slicer, on his own. Claimant called the restaurant manager and asked her if she would work to cover the employees' meal breaks that night, and the manager refused. Claimant asked the manager how he could "get things done" because he had nobody to cover for employees' meal breaks, and the employees had not been trained adequately. Audio Record at 13:20 to 13:29. The manager called claimant a "jackass" and told claimant she did not know why he was "getting mad" at her. Audio Record at 13:58, 13:32 to 13:44. Claimant responded that he was upset because he and the employees on his shift had not been trained properly. Claimant told the manager, "I can't do this anymore and I'm done." Audio Record at 13:49 to 13:54.

(9) On May 28, 2019, claimant quit work because the employer provided inadequate training for him and the employees he supervised, and because the employer did not provide coverage for claimant to ensure employees received meal breaks.

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-134370 concluded that claimant voluntarily left work without good cause because the lack of training and the manager's refusal to cover employees' work so they could have meal breaks did not create a grave situation for claimant.[1] The order also reasoned that, rather than quitting when he did, claimant had the reasonable alternatives of requesting a demotion to a nonsupervisory position requiring less training, and closing the restaurant to allow for meal breaks "and sustaining any adverse repercussions."[2] The order is not supported by the evidence and must be reversed.

The record shows that claimant faced a grave situation at work because the employer failed to provide claimant and the employees on his shift with the training necessary to perform their jobs safely, and with adequate personnel support so that claimant was able to provide meal breaks to the employees he supervised. Claimant complained repeatedly to each new manager in turn, and to the general manager of the employer's business, that he and the employees he supervised needed additional training to perform their work safely and efficiently. The record does not show that the employer responded with training or a plan for training claimant and the other employees. Claimant demoting to a nonsupervisory position would not alleviate the need for training to ensure a safe, efficient work environment. Moreover, the record does not show that the failure to provide training was attributable to claimant, and presumably expecting him to take a reduction in pay from a demotion was not a reasonable alternative. Nor does the record show that the employer would accept a voluntary demotion from claimant.

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." The record shows that, by failing to provide adequate support to cover the employees' duties so they could take meal breaks, the employer was leaving claimant no reasonable alternative but to quit rather than violate the law requiring meal breaks. Closing the restaurant was not a reasonable alternative because the employer told claimant in March 2019 that he was not permitted to close even just the drive-through to enable breaks.

The record also shows that the failure to provide support allowing employees to have meal breaks was a condition that was likely to recur, and that it would have been futile for claimant to continue to complain to the employer. The Court of Appeals has recognized that it may be good cause for a claimant to leave work when on an ongoing basis, an employer has engaged in practices that violate Oregon wage and hour laws. *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim). The circumstances that occurred on May 28 that prevented claimant from being able to provide adequate meal breaks for employees were likely to reoccur because the employees had insufficient training to cover for each other and the manager refused to assist

[1] Order No. 19-UI-134370 at 2, 3.

[2] *Id*. at 3.

claimant, even though she had committed to doing so in the past. Moreover, May 28 was already the second time claimant had been unable to cover for employees' breaks while the restaurant was open. No reasonable and prudent person would continue working indefinitely for an employer who failed to provide training to ensure a safe working environment or breaks on an ongoing basis. On these grounds, claimant demonstrated good cause for leaving work when he did.

Claimant quit work with good cause. He is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Order No. 19-UI-134370 is set aside, as outlined above.

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

DATE of Service: September 20, 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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