

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0801

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause, and was disqualified from benefits effective April 28, 2019 (decision # 135640). Claimant filed a timely request for hearing. On July 18, 2019 and July 29, 2019, ALJ S. Lee conducted a hearing, and on August 6, 2019 issued Order No. 19-UI-134604, affirming the Department's decision. On August 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was based upon the hearing record.

FINDINGS OF FACT: (1) Daimler Trucks North America LLC employed claimant from March 21, 2011 to May 2, 2019.

(2) In September 2018, claimant broke two bones in her foot and tore a ligament in a workplace fall. Claimant's recovery took an extended period of time and involved orthopedic surgery, inability to bear weight, use of a knee scooter, a period of time on crutches, and use of a walking boot.

(3) Prior to December 2018, claimant worked for the employer only as supervisor of training and development. Claimant worked full time, beginning work at 5:00 a.m. each day and leaving between 2:20 and 3:00 p.m. Three to four times each week, claimant took work home to complete after-hours.

(4) In December 2018, the employer assigned claimant the tasks of truck operations system supervisor as well. The truck operations supervisor tasks were, in and of themselves, a full time job. Claimant's workload doubled.

(5) Claimant's new duties required her to spend more time than before walking around the plant and visiting the production floor. Claimant found the increased walking extremely painful. Claimant complained to the employer's disability coordinator about having to spend more time on her feet. The disability coordinator recommended that claimant speak with her manager about not spending so much

time on the plant floor. Claimant tried to self-limit her time on the floor, but still experienced pain. She spoke with her manager, but the manager did not respond or change claimant's duties.

(6) Claimant spoke to her manager and the plant manager about her concerns about the new duties. They told her that they and the human resources manager had jointly decided that claimant was not busy enough in her role as supervisor of training and development and could handle both jobs. Claimant was told that the HR manager's mind was made up. Claimant's manager told her she could not trust the HR manager or confide in him because he would just tell the manager and plant manager whatever she said. Claimant's manager also told claimant, "In fact, she said from this point forward, any communications you have with [the HR manager], I want to be present for." July 18, 2019 hearing, Transcript at 12.

(7) Claimant's new duties required her to work additional hours. She worked 12-16 hours per day, "was taking work home every single night for hours and hours every single night," and worked most weekends just to keep up with the minimum workload. July 18, 2019 hearing, Transcript at 9.

(8) Every other week, claimant had a one-to-one meeting with her manager and told the manager she was having trouble. Claimant told her manager every meeting that she was concerned about the quality of work, and becoming physically and emotionally ill from it. She also reported that she was not sleeping or eating. *Id.* at 13-14. Claimant was distraught and cried in more than half of her one-to-one meetings with the manager during the last months of her employment; her manager "almost just basically tapped me on the back and said you can do it. You can do it." *Id.*

(9) Claimant talked to the plant manager about her concerns. The plant manager told claimant she was a "bulldog," that he believed in her, and that he knew she could do it. *Id.* at 18, 19. Claimant reiterated that she was telling the plant manager she could not do it. He responded, "Yes, you can." *Id.* at 24.

(10) Claimant tried her best to do the job. She worked 10-12 hour days, took work home and worked an additional 2-3 hours at home, slept two hours, woke up at 3:15 a.m., and tried to do more work. She tried to organize herself with lists and files, and to catch up, but remained behind in her work.

(11) Claimant's manager suggested that claimant delegate work to an hourly employee. Claimant arranged for the hourly employee to work for her sometimes. When she did, the manager pulled the hourly employee away from claimant's assignment to do other tasks, which caused claimant to get further behind in her work and have to rush to complete her tasks and the hourly employee's tasks.

(12) On one occasion claimant tried to talk to manager about her concerns, the manager said "You know what, you're becoming an, you know, unprofessional and complaining and that's not acceptable." July 29, 2019 hearing, Transcript at 19. Claimant felt her manager was dismissive of her.

(13) Claimant was unable to manage her dual roles. She asked to demote to a different role, but her manager said "that's not an option." July 18, 2019 hearing, Transcript at 33. In late April 2019, claimant visited the doctor, who recommended she take anti-depressants and anti-anxiety medicine to cope. Claimant took a few days off work for various medical reasons, but had too much work to do to take more time off. Claimant spoke with an attorney friend who said her working conditions sounded unfair, and she was treated badly, but it did not sound like retaliation or discrimination.

(14) In mid-April 2019, claimant's manager took some vacation leave for a week and delegated additional duties to claimant to cover for her while she was out. On April 18, 2019, claimant reported to work and was informed by an employee that she was in charge of his performance improvement plan. Claimant felt overwhelmed, "went into the restroom and I just cried." *Id.* at 19-20.

(15) Claimant could not cope with the working conditions anymore. She felt she could not go to the HR manager based on her manager's instruction not to do so. All of her complaints to the plant manager and her manager were ignored. She worked late into the night, typed up her resignation, and left it for her manager and plant manager. Claimant had not planned to resign when she did, but "had come to the emotional breaking point," and it was "an extremely dire, emotional, difficult time." July 29, 2019 hearing, Transcript at 19.

(16) After receiving claimant's resignation, the plant manager and manager did not reach out to claimant about her resignation or concerns. Claimant asked the plant manager why he had not, and the manager said, "we decided to just let you decide, among yourself, if you wanted to pursue this. So we just wanted to give you space." *Id.* at 20. He said, "I just want what's best for you, darling." And if you feel this is best, well, good luck. So he – he gave me no – there was no effort whatsoever to try and keep me or to help work out the solution or try to find an alternate. He just said well, basically, goodbye." *Id.* at 32.

(17) Claimant's manager did not respond to claimant's resignation. She did not interact with claimant as she normally had prior to receiving the resignation, and even lodged a complaint with the HR manager that claimant had been rude to her.

(18) On April 29, 2019, claimant contacted a corporate human resources manager and reported that she was experiencing a hostile work environment, that there had been potential discrimination and maybe retaliation, and that she would like to discuss it further prior to her exit interview. The manager said he would put her in touch with a local corporate HR person. The corporate HR person initially scheduled a meeting with claimant during her last week, but rescheduled it to the week after claimant's last day. Neither the corporate HR manager nor corporate HR person followed up with claimant prior to her last day regarding her hostile work environment, discrimination, and retaliation concerns.

(19) Claimant concluded prior to her last day of work, "I can't take it anymore. And clearly no one cares. No one even cares. And I – I should have stayed and I should have pursued it perhaps. But physically, mentally, emotionally I didn't. I just couldn't. I just didn't feel - I've never been in a role in my working life to this extent where it just seemed like it was acceptable and nobody cared. It was acceptable I guess. This is the way business is run and take it or leave it." July 18, 2019 hearing, Transcript at 38-39. Effective May 2, 2019, claimant voluntarily left work.

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 voluntarily left work without good cause, stating:

I was persuaded that claimant’s work situation was grave and her supervisor was asking her to perform an unreasonable amount of work. However, I am also persuaded that an ordinary and prudent person would have, at least, attempted to take her complaints up the chain of command, rather than just trying to cope. If the employer failed to take any action, particularly with her concerns about harassment and discrimination, it would have created good cause to leave her position. * * * I conclude it would have been a reasonable alternative to make a specific complaint to upper management or request a transfer to a less responsible position, rather than leaving herself with no income.

Order No. 19-UI-134604 at 4. The record supports the order’s conclusion that claimant’s working conditions were grave. Claimant was working 15-hour days and weekends, and unable to cope with the workload resulting from the dual roles. She was not sleeping or eating, she was emotionally distraught, and her doctor suggested anti-depressants and anti-anxiety medication. Claimant’s situation was grave.

The record does not support the order’s conclusion that claimant had reasonable alternatives to quitting her job, however. Although the order suggests claimant should have taken her complaints up the chain of command, the record reflects that claimant actually did so, on a number of occasions both before and after submitting her resignation, and none of the managers or corporate HR people took any interest in claimant’s concerns or actions to change her situation. The order under review suggested that claimant might have had good cause to quit work if the employer failed to take any action based upon claimant’s reports of harassment and discrimination. However, the record reflects that claimant made those reports to the corporate HR manager and another HR employee at least four days prior to quitting her job, and neither took prompt action to discuss her concerns with her, much less take reasonable steps resolve them. The order under review also suggested that claimant should have made “a specific complaint” or requested a transfer; the record shows, however, that claimant repeatedly complained to upper management without effect, and asked for a transfer only to be told that was “not an option.”

The undisputed evidence in the record is that between December 2018 and May 2019, claimant repeatedly reported to her manager and the plant manager that she was unable to do the work, and complained to corporate HR prior to quitting work, all with no effect.¹ The fact that claimant did not

¹ The fact that claimant’s complaints to corporate HR occurred after claimant resigned do not change the outcome of this decision. The Oregon Court of Appeals has repeatedly held that the correct point in time at which to determine whether reasonable alternatives existed is “at the time [claimant] left work,” not at the time claimant gave notice, or any point prior to the time claimant left work. *Roadhouse v. Employment Department*, 283 Or. App. 859, 391 P.3d 887 (2017); *Kay v. Employment Department*, 284 Or. App. 167, 391 P.3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or. App. 604, 403 P.3d 423 (2017); *Kay v. Employment Department*, 292 Or. App. 700, 425 P.3d 502 (2018) (*Kay II*). The fact that claimant complained to corporate HR prior to leaving, and HR did not take any action to address her complaints before she left, suggests that complaining to HR was not a reasonable alternative and would have been futile.

contact additional people does not suggest that doing so was a reasonable alternative to quitting work. As claimant explained, “contacting all these other people and trying to reach out to all these other people, and trying to resolve this issue for months, doesn't - isn't discounted because I didn't contact you [the human resources manager].” July 29, 2019 hearing, Transcript at 25. Claimant did not have any reasonable alternatives to quitting work remaining at the time she quit on May 2nd, and no reasonable and prudent person would have continued to work for their employer for an additional period of time under the circumstances described.

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-134604 is set aside, as outlined above.

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

DATE of Service: September 19, 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

ទោរទៅ – តម្រូវការនេះគឺជាភាពខុសគ្នារវាងការងាររបស់លោកអ្នកនឹងការងារដែលលោកអ្នកបានធ្វើមុន។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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