

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0823

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 65216). Claimant filed a timely request for hearing. On August 2, 2019, ALJ Janzen conducted a hearing, and on August 7, 2019 issued Order No. 19-UI-134622, concluding that claimant voluntarily quit work without good cause. On August 26, 2019, claimant filed a timely application for review of Order No. 19-IU-134622 with the Employment Appeals Board (EAB).

Claimant and the employer each submitted written arguments regarding claimant's application for review. However, neither party declared 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). The arguments also contained information that was not part of the hearing record, and did not show that the information was relevant and material and that factors or circumstances beyond the party's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Sky Recruiting Inc. employed claimant, last as its Vice President of Operations, from September 26, 2018 to June 5, 2019. One of claimant's duties was to act as the employer's human resources manager. The employer was co-owned by CJ and LJ (also known as LB), husband and wife.

(2) Between the beginning of his employment and April 1, 2019, the relationship between claimant and LJ steadily deteriorated. Claimant believed that LJ, who had a health condition that sometimes limited her abilities, often made requests and criticisms he considered irrational or unfair, based on response times she expected or previous statements she had made to him. Claimant responded to LJ's communications as best he could, including sometimes trying to respond respectfully by email to explain why there may have been a delay, or to describe alternatives for obtaining the requested information based on the employer's newly installed software. However, LJ generally considered such responses disrespectful and insubordinate and told him so in emails that she sent or copied to him. LJ's

complaints about claimant often put CJ in the middle of their disagreements, forcing him to act as a referee. Because claimant was the employer's human resources representative, he only had CJ to speak to about the issue, which he did several times. When claimant brought the issue up, CJ told him that "even if he felt like some of her requests were irrational, or unfair, that he needed to comply, and find a way to communicate with her," which claimant attempted to do. Transcript at 11.

(3) In early March 2019, during a meeting with CJ and claimant, LJ apologized to claimant for "the way she had been treating [him]," which she explained he "did not deserve." Exhibit 1, B.

(4) On March 29, 2019, claimant prepared a draft billing correspondence to a client that he sent to CJ and LJ for approval, and sent a copy to another coworker. LJ responded by email that it was "hard to know if you got it right," without seeing another document, and told claimant to "double check your work." Exhibit 1, A at 3. Shortly thereafter, claimant sent a responsive email to all that said, "It's already been handled. Best regards," to which LJ immediately responded, "Good." *Id.*

(5) However, on March 30, 2019, LJ sent the next email in that email chain: "I don't appreciate your smart ass response. Plus [CJ] said there was an error." Exhibit 1, A at 2. LJ sent a copy to the same other employee in her email response.

(6) On March 31, 2019, claimant responded to the March 30 email as follows:

Hi [CJ],

There are no errors on this invoice or the email attached to it. [CJ] reviewed it and confirmed it...The last typo was in the body of an email that was to be sent out to [another client]. This was a typo that I caught after [CJ] approved it.

Since I caught the [last] typo and corrected it, my eyeglasses came in that corrects my inability to see things up close. This is new for me since I had lasik and prk surgeries. The eye doctor said that the change in my vision was gradual enough for me not to notice until I was able to see the difference with and without glasses. Surely you can relate to this.

On multiple occasions you have requested for me to keep it simple and not overcomplicate things. I printed both the invoice and the invoice request so [CJ] could review them side by side for any errors...My response was not an attempt to be sarcastic, but keeping it simple per your request. I can start attaching the invoice request if you would like.

I am always open to constructive feedback. I would appreciate future reprimands were communicated to me either over the phone or in person and without other employees included.

Exhibit 1, A at 1-2.

(7) On April 1, 2019, CJ called claimant into the office and told him, "[T]oday's your last day, irreconcilable differences. You and [LJ] can't get along." Transcript at 11. However, CJ and claimant

agreed that claimant would continue working until he found another job if claimant agreed to help CJ find claimant's replacement and help that replacement transition into their new role.

(8) Between April 1 and June 5, 2019, claimant continued to work for the employer. During that time, claimant helped the employer locate an office manager for their new Phoenix, Arizona office that was opening, and helped her get familiar with the employer's software. However, during that transition time, LJ frequently criticized claimant, often with "unprofessionalism and disrespect," for not responding quickly enough to LJ's requests or suggesting alternatives for obtaining the information through their new software. Transcript at 23, 29; Exhibit 1, D and I. LJ's communications to claimant caused claimant stress to the point where it made him "sick to [his] stomach to even think about going into the office." Transcript at 17.

(9) On June 5, 2019, claimant sent an email to CJ, informing him that he was quitting because he could no longer tolerate being "disrespected and bullied" by LJ. Exhibit 1, K.

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). "Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined" OAR 471-030-0038(5)(f). 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:

Claimant quit his job with the employer on June 5, 2019, because he was frustrated by his ongoing dispute with [LJ] and believed [LJ] disrespected and bullied him. Although claimant tried to resolve his ongoing personality conflict with [LJ] through the employer's other owner, claimant's own emails establish that he regularly engaged and argued with [LJ]. Claimant's own deliberate actions helped to create the situation he faced. Claimant's shared responsibility for these issues establish that he did not face a situation of such gravity that he had no reasonable alternative but to quit. Claimant did not have good cause to leave his job with the employer and is disqualified from receiving unemployment insurance benefits.

Order No. 19-UI-134622 at 2. However, the order under review did not examine whether claimant's conduct in engaging with LJ or disagreeing with her emails or text messages was reasonable under the circumstances, and if it was reasonable, whether the circumstances he faced on June 5 constituted a situation of such gravity that he had no reasonable alternative but to quit when he did.

On this record, claimant's email responses to LJ were not unreasonable. They were respectfully drafted and generally responsive to LJ's requests either in providing the information requested or suggesting an

alternative for retrieving the information from the employer's software. Exhibit 1, A-J. The minor pushback claimant demonstrated on March 31 consisted of correcting LJ by explaining that there was no error in either the invoice or email being discussed. He then explained that there was an error in a separate email regarding another matter that he had already corrected, and made an entirely reasonable request that LJ not share any reprimand of his actions with other employees.

The minor pushback claimant demonstrated in the responsive communications he sent to LJ at the end of May and the beginning of June were also reasonable. On May 31, 2019, claimant was scheduled to be out of the office to travel to Southern Oregon to visit his parents. However, early that morning, LJ sent claimant an email request to send some agreements to the new office manager in Phoenix, Arizona. Despite being out of the office and driving to Southern Oregon, claimant responded to LJ's request by emailing that the agreements in question were in the employer's software and that he had authorized the new office manager to access the software and obtain the necessary agreements. LJ became upset with claimant for not sending the agreement by email immediately and sent claimant an email complaining about his failure to accommodate her request immediately. Claimant responded that he was on the road and explained that the new office manager had previously told him that she was familiar with the software and "had all of this." Exhibit 1, D. However between 11:00 a.m. and 3:00 p.m., LJ sent claimant several emails and text messages, often minutes apart, criticizing him for not responding to her request immediately. At approximately 3:00 p.m., claimant was able to access his laptop, download the requested agreement and send it by email to the office manager. Exhibit 1, D. At hearing, CJ admitted that he did not consider the email claimant sent to LJ "insubordinate" in any way. Transcript at 31.

Finally, on June 4, 2019, LJ sent claimant an email requesting that he send some spreadsheet information to the office manager in Phoenix with the comment, "I didn't realize I needed to report to you." Exhibit 1, I. Shortly thereafter, claimant responded to LJ by expressing surprise at her comment and explaining that he had never told anyone that anyone needed to report to him although he had suggested that the person needing the spreadsheet information contact him first because it was difficult to understand without the necessary background information. *Id.* He also explained that he had been unaware that the new office manager was going to begin work before June 10 as previously planned and that if he had known about her early start date, the recent problems could have been avoided. He also objected again to including others in the email reprimand he had just received. Later that day, after being criticized by LJ for failing to meet a deadline, claimant sent a responsive email simply defending the timing of his actions based on allegedly misleading communications made to him by LJ. Exhibit 1, I. Here too, claimant's responses were not unreasonable or disrespectful.

The record shows that when claimant quit on June 5, 2019, the employment relationship was irreconcilably broken. CJ essentially told claimant as much on April 1 when he told him, "[T]oday's your last day, irreconcilable differences. You and [LJ] can't get along." This was after claimant had tried to rehabilitate the relationship by discussing the matter with the only person he could, CJ. Given that circumstance and that, at the time claimant quit work, LJ's communications to claimant caused claimant stress to the point where it made him "sick to [his] stomach to even think about going into the office," no reasonable and prudent person in claimant's circumstances would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 19-UI-134622 is set aside, as outlined above.¹

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

DATE of Service: October 3, 2019

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.

¹ 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.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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