

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0829

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 10, 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 receiving benefits effective July 29, 2018 (decision # 123646). Claimant filed a timely request for hearing. On August 7, 2019, ALJ Wyatt conducted a hearing, and on August 20, 2019 issued Order No. 19-UI-135250, reversing decision # 123646 and concluding that claimant voluntarily left work with good cause. On August 28, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider the employer'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) Wave Broadband employed claimant from approximately April 2018 to July 31, 2018

(2) Claimant worked for the employer as a field sales representative. He was assigned to work in predominantly white neighborhoods. His job involved going door-to-door to sell the employer's services. Residents where he worked were not expecting him, and were sometimes rude and unwelcoming.

(3) The area the employer originally assigned claimant to work included the Carson, Washington area. On at least two occasions, claimant reported some of the harassment and racism he experienced there and elsewhere, and he and his supervisor had discussions about it. The supervisor switched claimant from working in Carson to working in different areas, including the Sandy and Boring, Oregon areas.

(4) Claimant continued to experience racist behavior while working. Some residents reacted poorly to an unannounced African American male with removable business stickers on his personal vehicle approaching their homes. Some residents were rude to claimant, yelled, and threatened him.

- (5) People in the neighborhoods claimant visited followed him every day while he worked; one individual followed him for two hours. He was required to use his personal vehicle for work, and grew concerned that individuals would take his license plate number and/or follow him home. He was concerned about being followed home because he transported his one-year-old in the same vehicle.
- (6) People in the neighborhoods claimant worked in called police to report claimant's presence a number of times. Claimant had to stop at the police station to let police know he was working in various neighborhoods to avoid having problems.
- (7) The racism claimant faced made it difficult for him to do his job, and also made him feel threatened. Claimant was afraid he was going to be shot or killed while working. Claimant was a combat veteran with experience being threatened, and felt the same way at work. Claimant experienced heightened levels of stress and anxiety, to the extent that he had to see a doctor and get anti-anxiety medication.
- (8) On claimant's last day of work, he and a coworker went to a trailer park to sell to residents there. As claimant and his coworker arrived, a tattooed "skinhead" with two dogs walked out on his front porch "calling me racial names and telling me to leave the property." Transcript at 6. Claimant's coworker shrugged off the incident, but claimant felt harassed and threatened, and felt like that was the last straw.
- (9) Claimant reported the incident to his supervisor. His supervisor was also African American and had experienced similar issues when he worked in direct sales. He understood, "Being cursed at and . . . for people to threaten to call the police if they don't recognize who you are. Those are the kinds of things that, uh, we deal with in this – in this type of position. And so, um, it's, you know, we don't necessarily have the discretion to determine, you know, where our customers are at. These are the customers that we serve." Transcript at 19.
- (10) The supervisor suggested that if claimant was not comfortable working in the area he had been assigned, they could try to move him to a different area, but the new areas were still predominantly white and claimant did not think the areas the supervisor suggested were likely to be much different than where he had been working. He decided to resign instead, effective July 31, 2019.
- (11) Claimant's decision to resign foreclosed the employer having an opportunity to explore putting claimant in a different role that did not include door-to-door cold calls. The employer's policy was that an individual had to be "successfully in a role, uh, for a period of six months or longer that they can apply for other position [*sic*], uh, within the organization." Transcript at 40. At all relevant times, claimant had only worked for the employer for approximately three months.

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.

Claimant quit work due to a grave situation, including racist behavior by some of the people he encountered in the course of doing his job that caused him to feel harassed and threatened and made him feel that his life was in jeopardy. Claimant did not have reasonable alternatives to quitting his job. The employer could potentially have moved him to a different area, but the new area would be demographically similar to the areas he had already tried to work. The supervisor's testimony at the hearing made it clear that such interactions with potential customers was just an ordinary part of working as a door-to-door cold call salesman, and it appears on this record that there was nothing the employer or claimant could do to change the working conditions as long as claimant worked in such a position. Although claimant's decision to quit his job foreclosed the possibility that the employer could have transferred him to a different kind of work that would not involve cold-calling, the supervisor's testimony also established that such transfers were only an option after six months of employment, and claimant had only worked for the employer for approximately three months. On this record, claimant did not have reasonable alternatives to quitting work when he did.

Regardless whether reasonable alternatives existed, no one should be required to tolerate abusive behavior or racism at work – whether by employers, coworkers, or customers – for fear that abandoning such an oppressive working situation will disqualify them from unemployment benefits. *See McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (holding that claimants need not sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or personal abuse).

Claimant was repeatedly exposed to racism at work that made him feel threatened, harassed, and to fear for his life. Regardless whether encounters with racists is a standard door-to-door cold call sales industry condition, and regardless that, as a practical matter, there is little the employer could have done to change the conditions under which claimant was required to work, claimant had good cause to quit work. He is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-135250 is affirmed.

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

DATE of Service: September 30, 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.

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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 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 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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