

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0835

Reversed ~ Revocada
No Disqualification ~ No Descalificación

PROCEDURAL HISTORY: On July 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 125656). Claimant filed a timely request for hearing. On August 14, 2019, ALJ Monroe conducted a hearing at which the employer did not appear, and on August 22, 2019 issued Order No. 19-UI-135451, affirming the Department’s decision. On August 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

INTERPRETER: The interpreter’s demeanor during the hearing resulted in the omission of parts of claimant’s answers and a “chilling” effect on claimant such that claimant may have felt she was not permitted to provide all relevant testimony. Were the outcome of this case not in claimant’s favor, EAB would have had to remand the case for additional information to ensure due process for claimant.

For example, the ALJ reminded the claimant, “Please try to speak in shorter groups of sentences . . . for the interpreter.” Transcript at 6. However, the interpreter did not transmit the ALJ’s statement, and instead stated to claimant, “I want to remind you to pause and not to speak while the interpreter is speaking.” Audio Record at 21:58. Although it is important for a witness to pause frequently to allow the interpreter to interpret the witness’s testimony, here, the interpreter often interrupted claimant mid-sentence when claimant’s pending testimony was not lengthy or complicated. On one occasion, the interpreter stated to the ALJ, “The interpreter would like to . . . direct the witness not to speak while the interpreter is speaking again.” Audio Record at 26:17; Transcript at 8. The interpreter did not merely remind claimant to wait for his interpretation to end before continuing her testimony, but added his own comments and stated to claimant, “Ma’am, you spoke again while I was speaking. If you do this, the judge does not understand either of us. If you do this, it can harm your testimony because the judge cannot hear what you said. So, I am telling you again, pause, and if you hear me speak, wait until the interpretation is finished before speaking. Because I want the judge to hear everything you said. Do you understand?” Audio Record at 26:24 to 26:52. The ALJ did not direct the interpreter to provide this advice to claimant, and the interpreter did not interpret his own comments for the ALJ and the record. Later in the hearing, the interpreter interrupted claimant mid-sentence again and, without receiving instruction to do so by the ALJ, stated to claimant, “Ma’am, you interrupted me again! Pardon me, it is

just that I want the judge to hear everything you say. Please, if I am speaking, wait for me to finish to say more. Do I make myself clear?" Claimant responded, "Yes." Audio Record at 42:35 to 43:09. The interpreter stated, "Thank you, you make repeat your testimony, please." Audio Record at 43:12. Claimant sighed, and stated quietly, "That is everything I was going to say, thanks." Audio Record at 43:24. The interpreter's displays of frustration appeared to discourage claimant from providing her testimony.

FINDINGS OF FACT: (1) ICWUSA.com Inc. employed claimant as an assembly worker from August 5, 2017 until July 3, 2019.

(2) Another assembly worker was "very rude" to claimant on a daily basis. Transcript at 7. He called claimant, "bitch," used the word, "fuck" toward claimant, and made comments when claimant went on her breaks such as, "Get out of here," and "Move it." Transcript at 7, 11. The comments "stressed" claimant "a lot." Transcript at 10.

(3) Claimant complained twice to her supervisor and her supervisor's supervisor (the manager) about how the coworker treated her, including what he stated to her and how he acted toward her. The first time claimant complained to the manager about the coworker's treatment of her, the manager told claimant he was going to "do something." Transcript at 16. The second time claimant complained about her coworker to the manager, she told him that the coworker's conduct was continuing, and the manager did not "say anything" to claimant. Transcript at 17. The employee continued to mistreat claimant on a daily basis throughout claimant's employment.

(4) Claimant's supervisor sometimes yelled at claimant, would be "in a bad mood," and would "get on" claimant. Transcript at 17. Claimant complained twice to the manager about how the supervisor acted toward claimant. The supervisor's conduct did not improve after claimant complained. Claimant did not know if the employer had a human resources department.

(5) Prior to June 14, 2019, the employer had never told claimant anyone had made complaints about her at work. Claimant had "never fought" with anyone and had not been "rude" to anyone. Transcript at 11.

(6) Other employees told claimant they had received raises while working for the employer. Claimant had never received a raise from the employer. On June 12, 2019, claimant asked the manager for a raise. He told claimant that he was going to speak with "the person," and then he would tell her about receiving a raise. Transcript at 13. On June 13, 2019, claimant picked up her paycheck and saw that she had not received a raise.

(7) On June 14, 2019, the manager called claimant to the office to meet with him and claimant's supervisor. The manager told claimant that he could not give her a raise because claimant "had a lot of complaints." Transcript at 6. He told claimant that she would not receive a raise until she changed. The only complaints claimant was aware of were the complaints she had made about the rude coworker and her supervisor. Claimant did not know what the employer expected her to change to receive a raise. Claimant did not discuss the matter further with the manager.

(8) On June 19, 2019, claimant gave the employer two weeks' notice that she planned to quit on July 3, 2019. Claimant left work because her supervisor and a coworker mistreated her at work, and claimant believed the employer did not give her a raise because she complained about how they treated her.

CONCLUSIONS AND REASONS: Claimant quit work for good cause. *La reclamante dejó el trabajo por una buena causa.*

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).

As a preliminary matter, Order No. 19-UI-135451 concluded that the proximate cause of claimant's decision to quit, and thus the proper focus of the good cause analysis, was the employer's refusal to grant claimant a pay raise rather than the “ongoing disparaging behavior” from claimant's coworker and supervisor.¹ As a result, the order does not evaluate whether claimant had good cause to leave work based on the mistreatment from the coworker and supervisor.² However, because claimant stated repeatedly that one of the reasons she quit when she did was the mistreatment from the coworker and her supervisor, it is necessary to assess whether claimant had good cause to quit work for that reason as well. Transcript at 7, 8, 9.

The order under review determined that rather than quitting when the employer did not give her a raise, claimant had the reasonable alternative of requesting further information about the employer's decision to deny her a raise.³ However, the record shows that, to the extent claimant left work because the employer denied claimant a pay raise, claimant left work for good cause. Claimant believed that the employer denied her pay raise because of her complaints about how her coworker and supervisor mistreated her. Based on this record, the preponderance of evidence shows claimant's belief was reasonable and more than mere speculation. First, claimant had complained to her supervisor and her manager twice about her coworker's mistreatment. Although his conduct was objectively offensive, claimant saw no improvement after she complained and the manager did not “say anything” to her when she complained the second time. Second, the record does not show a reason why the employer would deny claimant a raise based on complaints, other than claimant's own complaints about the coworker and supervisor. Third, the manager did not deny claimant the raise outright, but only did so after apparently meeting with claimant's supervisor, who was present at the June 14 meeting with claimant and the manager. The supervisor had both received and been the subject of claimant's complaints. Finally, the manager told claimant she would not receive a raise until she changed, and did not specify what conduct claimant needed to change. Claimant had not had any conflict at work other than having

¹ Order No. 19-UI-135451 at 3, footnote 1.

² Order No. 19-UI-135451 at 3.

³ Order No. 19-UI-135451 at 3.

complained about one coworker and the supervisor. No reasonable and prudent person would have continued to work for their employer for an additional period of time where the employer retaliated against them by denying them a raise because she complained about objectively offensive conduct from a coworker and a supervisor.

Claimant also left work for good cause because of how her coworker and supervisor treated her. Claimant faced a grave situation due to how she was treated in the workplace by one coworker and her supervisor. The supervisor mistreated claimant while she was working, and the coworker mistreated claimant on a daily basis during her breaks. Not only did claimant's repeated complaints prove futile, her complaints apparently resulted in retaliation, the denial of her request for a raise. The preponderance of the evidence shows a reasonable and prudent person would have no reasonable alternative but to quit when she did rather than continuing to work under such abusive conditions.

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

DECISION: Order No. 19-UI-135451 is set aside, as outlined above. *La Orden de la Audiencia 19-UI-135451 se deja a un lado, de acuerdo a lo indicado arriba.*

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

DATE of Service: October 4, 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.

NOTA: Esta decisión revoca una orden judicial que negó beneficios. Por favor tenga en cuenta que, si le deben beneficios, el Departamento puede tomar aproximadamente una semana para pagar esos beneficios.

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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section),

1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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