

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0885

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 23, 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 June 30, 2019 (decision # 115030). Claimant filed a timely request for hearing. On August 27, 2019, ALJ Janzen conducted a hearing, and on August 29, 2019 issued Order No. 19-UI-135811, affirming the Department's decision. On September 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Landscape Industries, Inc. employed claimant as a landscaper from April 2018 to July 1, 2019.

(2) During his employment, claimant developed significant concerns about his and others' safety on the job. He witnessed incidents he felt were unsafe, situations in which he lacked adequate training, and was assigned equipment that had been properly maintained or was unsafe to use. The owner repeatedly threatened to charge claimant and other employees for equipment that broke. Claimant also was concerned that the co-owner had accompanied him into a medical examination room, without invitation, after the owners' relative's dog bit claimant while he was working, and did not immediately leave when he said he was not comfortable with her being there.

(3) Claimant did not approach the owners with his concerns. Claimant had previously voiced a concern that the owner might be retaliating against a coworker for taking time off work. The owner told him "employees don't have any rights" and that claimant had probably cost the coworker his job.¹ The owner also said something like, "if you think that I'm treating you unfairly or that I'm unfair with my employees it's probably not going to work out."² Whenever equipment broke, the owner would become "angry over negligence, over the cost involved, over the time involved, all of that."³ The owner's "first

¹ Transcript at 18.

² Transcript at 39.

³ Transcript at 40.

response” when something broke was to threaten to charge the employee for the breakage, although he did not ultimately charge claimant for any breakage.⁴

(4) On June 28, 2019, claimant drove one of the employer’s trailers, which broke while he was driving it. Claimant felt that if he’d been driving under different circumstances the broken trailer might have caused a fatal accident. Claimant later heard the owner say that he knew the part was old and rusty and needed to be replaced soon, and was concerned that the owner had let them use a trailer in that condition.

(5) On July 1, 2019, having concluded that he was not safe at work and that he could not raise his concerns to the employer, claimant voluntarily left his job due to the safety concerns.

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 quit work without good cause. The order reasoned that although claimant “potentially faced a grave situation,” “the record did not establish that he explored his reasonable alternatives, which included notifying the employer of his concerns.”⁵ The order suggested that the co-owner’s willingness to comply with claimant’s request that he leave his medical examination room “suggests that the employer would have been willing to address his concerns.”⁶ On review, the record shows that claimant’s situation was grave, but does not support the conclusion that he had reasonable alternatives to quitting work when he did.

The facts show that claimant was bitten by a dog and wanted to seek urgent care, but was made to wait for a co-owner before going to urgent care.⁷ Without asking whether claimant needed assistance or minded the observation, the co-owner accompanied claimant to urgent care and stood by as he completed paperwork.⁸ Without asking if it was okay with claimant, the co-owner then “followed me into the [examination] room. I said I don’t feel comfortable with you being in the room. And then you said you – that you will be going with me into the exam room. And I said I don’t feel comfortable with that.”⁹ Claimant had to ask the urgent care employees to “explain to [the co-owner] what my rights of privacy were and that I had them.”¹⁰ In sum, claimant had to ask the co-owner to leave the exam room

⁴ Transcript at 40.

⁵ Order No. 19-UI-135811 at 2.

⁶ Order No. 19-UI-135811 at 2.

⁷ Transcript at 26.

⁸ Transcript at 26.

⁹ Transcript at 27, 42.

¹⁰ Transcript at 26.

twice and request that urgent care staff intervene before she left. Although the co-owner's actions might have been motivated by concern for claimant and a desire to make sure she had the information needed for claimant's worker's compensation claim, the record does not demonstrate the co-owner's willingness to comply with claimant's request.¹¹

The record therefore does not suggest that incident would prompt a reasonable and prudent person to believe that discussing concerns with the employer would have been a reasonable alternative to quitting work. That is particularly the case given that claimant had previously tried to approach the owner with concerns and in response was told that he did not have any rights, and that "if you think that I'm treating you unfairly or that I'm unfair with my employees it's probably not going to work out." He was also threatened with potentially unlawful action on the employer's part with respect to breakage.¹² Given those circumstances, nothing in this record suggests that claimant, or any reasonable and prudent person, would feel that either of the co-owners would be receptive to having a discussion about claimant's concerns about workplace safety, training, or any other matter at issue in this case. For those reasons, notifying the employer of his concerns was not a reasonable alternative to quitting work for claimant.

In the absence of evidence suggesting that other reasonable alternatives existed, the record shows that claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-135811 is set aside, as outlined above.

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

DATE of Service: October 17, 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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¹¹ Transcript at 34-35.

¹² Employers are legally prohibited from deducting the cost of broken equipment from the minimum wage. OAR 839-020-0020(6). A threat to withhold the cost of broken equipment is therefore a threat of a potentially unlawful act.



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 الاستئناف 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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