

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0888

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133813). Claimant filed a timely request for hearing. On August 21, 2019, ALJ Shoemake conducted a hearing, and on August 28, 2019, issued Order No. 19-UI-135756, affirming the Department's decision. On September 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument 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). However, EAB did consider the entire hearing record, including Exhibit 1, in reaching this decision.

FINDINGS OF FACT: (1) Umatilla-Morrow County Head Start Inc. employed claimant as the Director of Education and Disabilities from December 11, 2017 until claimant quit work on May 31, 2019.

(2) The employer's Head Start Director (JS) was claimant's direct supervisor. During 2018, claimant concluded that her supervisor was treating her unfairly. In an early 2018 evaluation, JS stated that claimant "lead from behind," in June 2018 she told claimant that she "should" let the staff know about her upcoming FMLA leave the employer had granted, in a June 2018 evaluation she criticized claimant for not "reach[ing] out" to other directors enough, and when claimant disagreed with JS's actions, she told claimant she was being "defensive." Exhibit 1, Attachment for Resignation Letter at 1-6. She also criticized claimant's communication and writing styles, told her that she had not been sufficiently assertive or self-aware and that her that her management and leadership style was not viewed as that of a credible leader. Claimant decided that her supervisor's criticisms of her had "crossed the line" and left her "humiliated" and so on September 7, 2018 claimant submitted her resignation, effective October 5, 2018. Exhibit 1, September 7, 2018 Resignation Letter at 1-6.

(3) Between September 7 and October 5, 2018, the employer persuaded claimant to rescind her resignation by taking steps to improve the communications between claimant and JS.

(4) Between October 2018 and the end of May 2019, claimant attended mental health counseling with a licensed therapist. In her initial session she described herself as the only black American in the workplace and a person who was “normally ‘closed off and introverted.’” Exhibit 1, October 23, 2018, session notes. She reported that her introverted personality was an issue with her supervisor who often criticized her for being “unapproachable” and someone who did not “fit” as a director for that reason. Exhibit 1, October 23, 2018, session notes. She also complained about being continually micromanaged by her supervisor but acknowledged that she had “received support from HR and upper level management.” Exhibit 1, November 12, 2018, session notes. In December 2018, claimant reported that she had a successful, unsupervised meeting with her supervisor that had “lowered her anxiety significantly.” Exhibit 1, December 3, 2018, session notes. However, in January 2019, claimant described dissatisfaction with her one-year job evaluation which left her with “disgruntled feelings.” Exhibit 1, January 17, 2019, session notes. Thereafter, her relationship with her supervisor deteriorated resulting in “stress headaches” as claimant described receiving only negative feedback from her rather than favorable feedback for the positive things she did every day. Exhibit 1, April 30, 2019, session notes.

(5) On or about April 19, 2019, claimant’s supervisor gave the employer notice that she was quitting on June 19, 2019.

(6) On May 1, 2019, claimant met with her supervisor to discuss her supervisor’s transition plan for claimant. Claimant expressed her concern and disagreement that her plan was primarily negative because it described her as “not interpersonal enough” and “non-relational” and a person who didn’t carry her “fair share of the load,” and indicated the two of them were “not on the same page of interactional fairness as supervisor and supervisee.” Exhibit 1, May 1, 2019, meeting notes. Claimant explained that all that she had wanted was a fair assessment of her work, both her shortcomings and her strengths, and that the supervisor’s plan for her only mentioned “concern after concern.” Exhibit 1, May 1, 2019, meeting notes. She informed her supervisor that she was dealing with stress headaches, which she attributed to her work environment, specifically not knowing whether her actions would be viewed only negatively. At the end of the meeting, claimant notified JS that she was resigning, effective May 31, 2019. She sent her resignation notice to the Executive Director (MM), the deputy director (AT) and the Human Resources director (NJ).

(7) On May 3, 2019, the assistant director met with claimant and expressed his wish that claimant would stay. Claimant expressed her dissatisfaction with being micromanaged and typically having her decisions as a director overruled. She also notified him that she was experiencing stress headaches she attributed to not knowing on a daily basis how her leadership would be scrutinized by her supervisor.

(8) On May 4, 2019, claimant met with the executive director MM and explained that she was leaving due to what she considered unfair and unequal treatment by her supervisor which was causing her health issues. She also requested a new supervisor which MM agreed to discuss with the employer’s board.

(9) Between May 1 and May 29, 2019, claimant continued to work. On or about May 23, 2019, she received “The Complete Book of Poetry” written by Maya Angelou as a farewell gift from the

employer's management. Exhibit 1, May 29, 2019, "A Note of Mention" at 2. The book was circulated to employees who were told to find a poem that reminded them of claimant. Two of the employees selected poems that included racially charged content which bothered claimant. Claimant did not return to work after May 29, 2019 and took some vacation time.

(10) On May 31, 2019, claimant quit her job with the employer because of what she considered "unequal and unfair treatment...by [her] supervisor" which had affected her health. Transcript at 7-9. Before quitting, claimant did not request time off until her supervisor had resigned, because she "did not think of that." Transcript at 29. The employer would have considered such a request. Transcript at 34.

(11) Prior to claimant quitting work, claimant's supervisor notified the employer that she planned to quit work effective June 19, 2019. Claimant became aware prior to quitting her job that the supervisor planned to leave.

CONCLUSION AND REASONS: Claimant voluntarily left work without 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 effective May 31, 2019 because her supervisor's treatment caused her stress headaches and affected her health. Although claimant indicated that her medical professional advised her to quit, the session notes from her therapist she offered and were admitted into evidence do not reflect any recommendation that she quit her job. Cf. Transcript at 20 and Exhibit 1, Session notes, October 23, 2018 through May 30, 2019. Claimant also admitted at hearing that her concerns with the work environment surrounded her supervisor, JS, who was leaving the work environment permanently on June 19, 2019. Transcript at 12-13. JS had submitted her resignation notice to the employer prior to claimant submitting hers. Although claimant's concerns with her supervisor may have negatively affected her health and for that reason constituted a grave concern for her, she had the reasonable alternative of continuing to work for the employer until June 19th, when her supervisor – the primary source of her work concerns – was leaving her job, thus eliminating claimant's primary concern. According to the employer's witness, claimant apparently also had the reasonable alternative of requesting time off work until JS had left on June 19, 2019, eliminating the need for claimant to interact further with the supervisor whose behavior was causing the bulk of claimant's concerns. Viewing the record as a whole, claimant failed to meet her burden to show that no reasonable and prudent person in her circumstances would have pursued those reasonable alternatives to quitting when she did and continued to work for the employer beyond May 31, 2019.

Claimant voluntarily left work without good cause under ORS 657.176(2)(c). Accordingly, claimant is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-135756 is affirmed.

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

DATE of Service: October 24, 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 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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