

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0919

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 29, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75745). Claimant filed a timely request for hearing. On September 4, 2019, ALJ S. Lee conducted a hearing, and on September 13, 2019, issued Order No. 19-UI-136500, affirming the Department's decision. On September 25, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Foodstuff Enterprises Inc. employed claimant from March 22, 2017 until June 23, 2019 as a server at the restaurant, Bella Union Restaurant and Saloon in Southern Oregon.

(2) Claimant had worked in the restaurant industry for 20 years. He had been a recovering alcoholic for 13 years.

(3) Throughout his employment, claimant felt lonely and "depressed" because he did not "fit in" with the other employees, and did not have the same opportunities as his coworkers to socialize with each other and the employer's clientele outside of work. Transcript at 5-6. Claimant did not socialize more with his coworkers as his employment progressed. Claimant believed his coworkers did not invite him to socialize outside of work because he did not consume alcohol as they did while socializing, and because he was older than many of them. Claimant was not required to drink alcohol as a condition of employment.

(4) The employer included claimant in its workplace events, such as its employee barbecues. Claimant participated in those events.

(5) The employer's bartender was claimant's superior because he had worked for the employer for longer. Claimant felt "tension" between him and the bartender. Transcript at 8. In May 2019, claimant and the bartender were both working. Claimant asked the bartender if he had prepared drinks for one of claimant's tables. The bartender followed claimant into the pantry and "jammed his fingers into [claimant's] chest," stated to claimant that "[he was] a pain in the ass," and "aggressively poked

[claimant] with more than one finger.” Transcript at 9. Claimant backed away, told the bartender he could not touch him like that, and asked the bartender if he was “kidding.” Transcript at 9. The bartender told claimant he was not kidding. Claimant immediately told the owner about the incident with the bartender. Although claimant felt threatened when the incident occurred, he told the owner that, “it was no big deal and [that he] didn’t really care,” but wanted to inform him because he was the manager on duty. Transcript at 10. Claimant thought the owner might not schedule him to work with the bartender, who was the primary bartender and worked most shifts. Claimant did not believe he was in physical danger after the incident, and did not want the employer to schedule claimant to work less often.

(6) Also during May 2019, claimant was discussing who should serve a table with two other employees, and another employee put his hand on claimant’s shoulder to signal to claimant to stop talking. Claimant told the employee not to touch him. The employee then “aggressively slam[med]” his hand into claimant’s shoulder, hurting claimant and causing claimant’s body to “jolt.” Transcript at 13. Claimant told the employee never to touch claimant like that again. Claimant immediately moved away from the employee, and into the kitchen, where he told the owner that the employee had hit him. The owner was busy at the time. Claimant did not discuss the matter with the owner, or other employer representative, again.

(7) The two physical interactions between him and the two employees aggravated claimant’s feeling of isolation from his coworkers. Claimant did not tell the employer’s owners that he was feeling “left out,” but did tell them that he did not feel he “got along” with his coworkers or the employer’s customers. Transcript at 22.

(8) On June 9, 2019, claimant gave the employer notice that he would quit work on June 23, 2019 because he did not feel he “fit in” at work, and wanted to seek work in a different industry in Portland, Oregon. Transcript at 26.

(9) On June 23, 2019, claimant left work. On July 9, 2019, claimant moved to Portland, Oregon, with the intention of seeking work in an industry other than the restaurant business.

CONCLUSIONS 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). Claimant had alcoholism, which may be considered a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit work because he felt generally lonely and “depressed” because he did not “fit in” at work. Two physical aggressions from coworkers during May 2019 accentuated his feelings of isolation from the other restaurant employees. To the extent claimant quit because he felt he did not “fit in” in his

workplace, he did not establish good cause for leaving work when he did. Claimant would have preferred to establish friendships with his coworkers that extended outside the workplace. However, the record does not show that his coworkers' failure to socialize with him outside of work made his work unsuitable.¹ Nor does the record show that claimant was required to consume alcohol for his position, or that he felt his position risked his ability to remain sober. On this record, claimant did not establish that his position was unsuitable because it posed a risk to his health, safety or morals, or that it was unsuitable based on his prior training and earnings. Moreover, the record does not show that the employer treated claimant differently at work because he was a recovering alcoholic; the employer included claimant in employment-related social events, such as its barbecues. Claimant had not been diagnosed with depression, and the record does not show that claimant's loneliness and depression caused a situation for claimant of such gravity that a person who was a recovering alcoholic would have had no reasonable alternative but to quit work when he did.

Claimant did not assert that he left work because he feared additional physical mistreatment from his coworkers, or because he was dissatisfied that the employer apparently failed to address the incidents. However, assuming that claimant left work in part due to his coworkers' physical mistreatment of him, the record does not show that no reasonable person with claimant's impairment would have left work rather than first seek additional assistance from the employer. Although physical mistreatment in the workplace might in some situations be considered a situation of gravity, in this case the record does not show that claimant communicated to the employer the seriousness of the incidents. Rather, claimant communicated that "it was no big deal and [that he] didn't really care." To the extent claimant nevertheless might have thought the employer should have done more to address the situation, claimant did not communicate that to the employer or pursue his complaints with the employer, as a reasonably prudent person would do, after he initially reported the incidents.

For the reasons stated herein, claimant did not establish good cause to quit his job with the employer. He is therefore disqualified from receiving unemployment insurance benefits until he has requalified for benefits under Employment Department law.

DECISION: Order No. 19-UI-136500 is affirmed.

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

DATE of Service: November 1, 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

¹ In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190.

'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 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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