

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0926

Order No. 19-UI-136429
Modified ~ Late Request for Hearing Allowed
Disqualification Effective May 19, 2019

Order No. 19-UI-136491
Affirmed ~ Benefits Not Payable

PROCEDURAL HISTORY: On June 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause, and denying claimant unemployment insurance benefits effective April 28, 2019 (decision # 115652). On August 13, 2019, the Department served notice of an administrative decision concluding that claimant was ineligible for benefits during the period between two successive academic years, from July 14 through August 24, 2019 (decision # 80643). On August 15, 2019, claimant filed a late request for hearing on decision # 115652, and a timely request for hearing on decision # 80643. On September 10, 2019, ALJ Murdock conducted a combined hearing on both decisions, and on September 12, 2019, issued Order No. 19-UI-136429, allowing claimant's request for hearing and affirming decision # 115652. On September 13, 2019, ALJ Murdock issued Order No. 19-UI-136491, modifying decision # 80643 and concluding claimant was ineligible for benefits during the period between two successive academic years, from July 14 through August 31, 2019. On September 26, 2019, claimant filed an application for review of Orders No. 19-UI-136429 and 19-UI-136491 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of Order No. 19-UI-136429 under review allowing claimant's request for a hearing on decision # 115652, and Order No. 19-UI-136491, are **adopted**. The remainder of the decision addresses the nature of claimant's work separation from Multnomah County School District #1 and whether claimant had good cause to quit when he did.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-136429 and 19-UI-136491. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0926 and 2019-EAB-0927).

FINDINGS OF FACT: (1) Multnomah County School District #1 employed claimant from September 15, 2014 until May 24, 2019 as a custodian.

(2) During 2018, a new lead custodian began working at the school where claimant worked at that time. Claimant believed that the lead custodian “didn’t like” him. Transcript at 34. The lead custodian and claimant had occasional verbal conflicts. Sometime before April 2019, one of claimant’s managers told him that he could “have [claimant] removed from this building,” referring to the school where claimant worked. Transcript at 34. Claimant considered the statement to be “harassment,” because the manager had told him he would move claimant to a different school but had not yet done so. Transcript at 34.

(3) On April 24, 2019, the lead custodian became upset with claimant due to claimant’s comments when they discussed an item left by a homeless person on school property. Claimant left work after the conversation because he was not feeling well. After he left work, a manager called him and told him he would be transferred to another school on May 1, 2019. The employer expected claimant to complete his shifts at his current school on April 25, 26, 29 and 30, 2019, before it transferred him.

(4) Claimant did not report to work or contact the employer for his scheduled shifts on April 25, 26, 29 or 30, 2019.

(5) Claimant understood from a custodian representative that the employer expected him to report to work at the new school at 3:30 p.m. on May 1, 2019.

(6) On May 1, 2019, claimant reported to work by 3:30 p.m. At the beginning of his shift, while claimant was standing behind a desk in a room, looking for some paperwork, two facilities operation managers (FOMs) entered the room and closed the door behind them. Claimant greeted one of the FOMs, who he had met before, and introduced himself to the other. The FOM claimant had not met before was visibly upset with claimant and began to speak to claimant using a “sharp and hostile tone.” Transcript at 30. The FOM told claimant that he had failed to report to a meeting at 1:30 p.m. that day, and warned claimant that he could not engage in the same conduct as he had in the school where he had previously worked. The FOM yelled at claimant and told claimant that he was “willing to forget [claimant’s] past action,” but that claimant needed to decide if he wanted to resign. Transcript at 31. Claimant did not understand to what “past action” the FOM referred. Claimant explained that a custodian representative had told him to report at 3:30 p.m. Claimant looked at the other FOM whom he knew for support, and that FOM told the other, upset FOM that claimant’s tardiness was “just a miscommunication.” Transcript at 31. Claimant felt “trapped” in the room with the FOMs because the FOMs were standing in front of the closed door. Transcript at 17. Based on the manner in which the upset FOM spoke to claimant, he believed that he was implying that claimant should resign or he would be physically unsafe at work. Transcript at 21, 22. After the FOMs left the room, claimant left the room, and left work. Transcript at 40.

(7) Claimant was scheduled to work on May 2, 2019. Claimant did not report to work, but left a voicemail for an employee at the employer’s employee and labor relations office (“personnel”) complaining about how one of the FOMs had treated him on May 1. Transcript at 19. Claimant asked the personnel employee to return his call. Transcript at 25.

(8) Claimant did not report to work from May 2 through May 22, 2019, while he waited for a response from personnel. The personnel representative claimant had contacted had stopped working for the employer on May 15, 2019, and did not respond to claimant before leaving work.

(9) On May 22, 2019, when claimant had not received a response to his voicemail, he resent his complaint to personnel by email, and explained what occurred during the meeting with the two FOMs on May 1. Claimant stated that he had not intended to resign, but felt uncomfortable with the manner in which the May 1 meeting took place.

(10) On May 24 and 28, 2019, personnel emailed and left voicemails for claimant apologizing for its late response and asking claimant to provide a time to meet with personnel. Claimant did not respond and did not return to work.

(11) On May 24, 2019, claimant left work because he felt “threatened” and that the workplace was unsafe for him. Transcript at 25.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause during the week of May 19 through 25, 2019. Claimant therefore is disqualified from receiving benefits, effective May 19, 2019.

Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (December 23, 2018). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

Order No. 19-UI-136429 concluded that the work separation was a voluntary leaving because claimant chose not to return to work although the employer was willing to allow him to continue working.¹ The order under review found that the date claimant separated from work was May 2, 2019.² However, claimant left a voicemail for personnel on May 2, and awaited a response until May 22, when he followed up with a written complaint to personnel. Claimant stated in his May 22 email to personnel that “[his] intention [had] not been to resign,” and that the May 22 email was his effort to “proceed to the next step in writing.” Transcript at 31, 27. Claimant’s May 22 email shows he still wanted to pursue his complaint and resolve the situation with the employer. It was not until claimant failed to respond to personnel’s May 24 and May 28 emails, in conjunction with his failure to return to work, that claimant severed the employment relationship. Although the employer showed it was willing to continue the employment relationship and meet with claimant after May 24, claimant chose not to respond to personnel or return to work. Thus, the record shows that claimant voluntarily left work, but not until May 24, 2019 when he severed the employer-employee relationship.

¹ Order No. 19-UI-136429 at 4.

² Order No. 19-UI-136429 at 2.

Quit. 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 because he felt threatened and unsafe after a facilities operation manager (FOM) treated him in an intimidating manner on May 1, and personnel failed to respond to a voicemail complaining about the incident before May 24, 2019. Claimant also identified one prior incident where he felt “harassed” when a manager told him that he could have claimant removed from the building where claimant worked, apparently in response to conflict between claimant and the lead custodian.

Claimant was the only firsthand witness regarding the May 1, 2019 meeting. A reasonable and prudent person would have considered their work situation grave because the FOMs conducted the May 1 meeting in an intimidating manner, where one FOM yelled at claimant, made a vague reference to claimant’s “prior conduct” without clarification, suggested that claimant consider resigning, and conducted the meeting standing in front of the closed door to the room. Although the FOMs conducted the May 1 meeting in a manner that claimant found intimidating, the record does not show that the FOMs’ conduct during the meeting, viewed objectively, was a sufficient basis for claimant to feel unsafe at work such that he had no reasonable alternative but to quit work when he did. The record does not show that claimant was subjected to physical aggression or threatened with physical harm during the meeting, or otherwise during his employment. In addition, one of the FOMs at the May 1 meeting supported claimant during the meeting by stating that claimant’s tardiness that day was due to a misunderstanding. Although personnel did not respond to claimant’s May 2 voicemail message, his circumstances were not so grave that no reasonable and prudent person in his circumstances would have quit work on May 24 rather than agree to meet with personnel at that time about his complaint. Absent a preponderance of the evidence showing that claimant would be unsafe at work and that it would be futile to pursue a remedy with personnel before quitting, claimant failed to establish he faced a circumstance of such gravity that he had no reasonable alternative but to quit work when he did.

DECISION: Order No. 19-UI-136429 is modified and Order No. 19-UI-136491 is affirmed, as outlined above.

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

DATE of Service: October 31, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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