

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0930

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92646). Claimant filed a timely request for hearing. On September 20, 2019, ALJ Snyder conducted a hearing, and on September 27, 2019, issued Order No. 19-UI-137201, affirming the Department's decision. On September 30, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was based on the hearing record.

FINDINGS OF FACT: (1) LS Manufacturing Inc. employed claimant from October 2018 until August 6, 2019 as a metalworker. The employer's owner was a sole proprietor, and claimant was the only employee throughout his employment.

(2) In December 2018, the owner was "not satisfied in some manner" with how claimant was performing his work, became angry with claimant, and clenched his fist and shook it in claimant's face. Transcript at 8. Claimant contacted Oregon OSHA about the incident. The OSHA representative told claimant he could file a report with OSHA about the incident, but claimant decided not to file a report because he hoped nothing similar would occur again.

(3) On February 1, 2019, claimant gave the owner a letter requesting a review of claimant's pay rate and the opportunity to "sit down to discuss it." Transcript at 21.

(4) Later in February 2019, the owner clenched and shook his fist in claimant's face again, and used foul language toward claimant. Claimant did not report the owner's conduct to OSHA or elsewhere because he was hopeful the owner would meet with him to discuss his wage rate and other "personnel matters" with him. Transcript at 11.

(5) Although claimant asked the owner in February and March about the letter regarding his pay rate, the owner told claimant he would review the letter, but did not respond to claimant's request to discuss his pay rate.

(6) From February to July 14, 2019, the employer reduced claimant's hours from 43.5 hours per week to 14 hours per week due to business reasons. Claimant did not have a regular schedule, and the owner would often text claimant telling him not to report to work or to report to work late on days the employer had scheduled claimant to work. Claimant was looking for other work while working for the employer.

(7) Claimant was concerned about the owner's temper when he saw him "beating up . . . and kicking" a spot welding machine for 10 or 15 minutes. Transcript at 26.

(8) On August 6, 2019, the owner saw claimant put a piece of steel in a rack and lift it over his head in an unsafe manner. The owner went over to claimant and grabbed the piece of steel, called claimant a "God damn son-of-a-bitch," and told him to put the steel on a rack first. Transcript at 6. Claimant left work.

(9) Later on August 6, 2019, claimant sent the employer a text message stating that he quit work. Claimant left work due to how the owner treated him and the reduction in his hours.

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. If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with the individual's return to full time work or unless the cost of working exceeds the amount of remuneration received from work. OAR 471030-0038(5)(e).

Order No. 19-UI-137201 concluded that claimant voluntarily left work without good cause. The order reasoned that the employer's conduct of "twice [shaking] his fist at claimant" and calling claimant a foul name did not amount to a situation of such gravity that he had no reasonable alternative but to leave work when he did.¹ The order also implied that claimant had the reasonable alternative of filing a complaint with OSHA before he quit. However, the record does not support the order's conclusions.²

To the extent claimant left work due to the owner's behavior toward him, claimant left work with good cause. The owner's outbursts of temper including kicking machinery, shaking a clenched fist in claimant's face, and calling claimant an angry, foul name constituted a grave situation for claimant. *See*

¹ Order No. 19-UI-137201 at 2-3.

² Order No. 19-UI-137201 at 2.

McPherson v. Employment Division, 285 Or 541, 591 P2d 1381 (1979) (claimants need not “sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the work from unemployment benefits”; the law “does not impose upon the employee the one-dimensional motivation of Adam Smith’s ‘economic man’”). The owner’s conduct was volatile and directed at claimant personally, and it was thus understandable that claimant considered the conduct “violent” and “menacing.” Transcript at 6. Claimant had no reasonable alternatives but to quit work because of the owner’s behavior. Based on the owner’s apparent short temper with claimant and his failure to respond to claimant’s request to discuss the less contentious matter of claimant’s wage rate, it would likely have been futile for claimant to complain to the owner directly about how his conduct bothered claimant. Because the owner was a sole proprietor, claimant could not complain to anyone else at work. Although claimant did not file a complaint with OSHA, such a complaint would more than likely than not have been futile where the workplace aggression originated with the employer’s owner.

To the extent claimant left work because the employer reduced his hours, claimant did not have good cause to quit when he did. Claimant did not assert, and the record does not otherwise show, that the cost of working exceeded the remuneration claimant received from work. However, claimant asserted that the “on-call” nature of his schedule interfered with his ability to accept other work because he did not know what days each week he would be available. Transcript at 14. Although claimant’s unreliable schedule may have interfered with his ability to find other *part time* work, the record does not show that working for the employer 14 hours per week interfered with claimant’s ability to return to full time work, and claimant testified that he was looking for other positions. *See* OAR 471030-0038(5)(e). Therefore, the record does not show claimant had good cause to leave work under OAR 471-0300038(5)(e).

In sum, although claimant did not have good cause to quit work due to a reduction in hours, he voluntarily left work with good cause to avoid mistreatment from the employer’s owner. Claimant therefore is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-137201 is set aside, as outlined above.

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

DATE of Service: November 5, 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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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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