

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1040

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 75748). Claimant filed a timely request for hearing. On October 10 and 11, 2019, ALJ Janzen conducted hearings, and on October 15, 2019, issued Order No. 19-UI-138125, affirming the Department's decision. On November 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. Even if EAB had considered claimant's written argument, this decision would remain the same. Claimant's written argument was duplicative of her testimony at the hearing and addressed matters that were not relevant to the merits of the case.

CREDIBILITY DETERMINATION: The order under review found that discrepancies existed between the testimony of the claimant and the employer's witnesses.¹ Due to these discrepancies, the order under review concluded that claimant's testimony was illogical in certain respects, and therefore, not credible.² The record does not support that conclusion. The order under review may have found claimant's testimony less credible due to claimant's manner of organizing and articulating her thoughts. However, claimant's demeanor over the telephone was not indicative of whether her testimony was less credible than that of employer's witnesses.

FINDINGS OF FACT: (1) Jones Adult Foster Homes employed claimant from April 20, 2018 until August 19, 2019, last as a house manager at the employer's 24-hour residential home.

¹ Order No. 19-UI-138125 at 2-3.

² Order No. 19-UI-138125 at 3.

(2) Claimant considered her work environment to be “hostile” due to “physical aggression,” “mental abuse,” and requests to perform “illegal activities” by the employer. Transcript at 5. In spite of the work environment, claimant continued to work for the employer due to her concern for the employer’s developmentally disabled clientele until a staff pay raise issue prompted claimant to resign from her position.

(3) As of August 1, 2019, all the pay raises the employer had authorized had taken effect. Not all staff members received a raise. Claimant had requested a pay raise for her sister, which was higher than the cost of living raise that had been approved by the employer’s management team.

(4) The employer scheduled a meeting with claimant on August 5, 2019 to discuss why claimant recommended a higher pay raise for her sister. Claimant appeared at the meeting only to tender her two weeks’ notice that she planned to quit on August 19, 2019. Claimant did not want to discuss anything with the employer’s management team.

(5) Claimant quit her job with the employer on August 19, 2019 due to her belief that promised pay raises to staff did not occur.

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). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). 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 identified a lot of issues in the workplace that caused her concern. However, the record shows that claimant did not quit work because of those concerns because she continued working for the employer throughout the time those issues were occurring. Rather, the timing of claimant’s resignation suggests she resigned from her position due to her belief that promised pay raises to staff did not occur. See October 10, 2019 Hearing, Transcript at 14-15. Claimant was not directly affected by the raises, and her concern was about whether other people, including her sister, were receiving raises, and about how much they would receive. Claimant’s concern about other people’s raises did not create a grave situation for claimant such that she had no reasonable alternative but to leave work when she did. Additionally, claimant had reasonable alternatives to quitting work because of her concern about the pay raises. The employer had scheduled a meeting with claimant to address her concerns, but claimant chose not to attend the meeting. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work without discussing their work concerns with management first, particularly when management had already scheduled a meeting with her for that purpose.

Claimant has not met her burden of proof that she faced a situation of such gravity that she had no reasonable alternative but to quit. For those reasons, claimant voluntarily left work without good cause. Claimant is disqualified from receiving benefits based on this work separation.

DECISION: Order No. 19-UI-138125 is affirmed.

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

DATE of Service: December 9, 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 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

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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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