

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1060

Reversed
No Disqualification
Eligible During School Recess

PROCEDURAL HISTORY: On September 18, 2019, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding that claimant voluntarily left her job at Greater Albany Public Schools without good cause and was disqualified from receiving benefits effective March 17, 2019 (decision # 125235), and the other concluding that benefits were not payable to claimant during Greater Albany Public School's summer recess period, June 16, 2019 through August 31, 2019, because she had reasonable assurance of employment after the break (decision # 131950). On September 24, 2019, claimant filed timely requests for hearing on both administrative decisions. On October 18, 2019, ALJ Murdock conducted a consolidated hearing. On October 21, 2019, ALJ Murdock issued Order No. 19-UI-138438, affirming decision # 125235, and on October 22, 2019 issued Order No. 19-UI-138528, modifying decision # 131950 and concluding that benefits were not payable to claimant from August 11, 2019 through August 31, 2019.¹ On November 1, 2019, claimant filed timely applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-138438 and No. 19-UI-138528. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-1060 and 2019-EAB-1061).

Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

¹ Decision # 131950 concluded that benefits were not payable to claimant between August 11, 2019 and September 14, 2019. Order No. 19-UI-138528 said that it affirmed that decision, but denied benefits for a different period of time, August 11, 2019 through August 31, 2019. Order No. 19-UI-138528 therefore did not affirm decision # 131950, it modified that decision.

FINDINGS OF FACT: (1) Greater Albany Public Schools employed claimant from September 24, 2018 to March 31, 2019. Claimant's position was temporary, and she was hired under a contract for employment between September 24, 2018 and the end of the 2018-2019 academic year. Claimant's contract was not renewable; if she wanted to continue working for the employer when her contract expired, claimant would have to submit a new application for a job with the employer.

(2) The employer hired claimant to teach students in an new alternative education program that was housed within a school categorized as a behavior and detention site. Claimant understood that she would be working with students with alternative education needs, and that students with behavioral problems would be in different classrooms.

(3) Students in claimant's classroom and the school engaged in violent and dangerous behaviors. A student threw a trash can that would have hit claimant had she not ducked. A student threatened to kill her by cutting her eyes out with a serrated knife. Students repeatedly destroyed property in her classroom and broke a window. Students repeatedly fought each other, and sometimes staff. A student tried to run through her when she stood between him and a student he wanted to attack. A student trapped claimant in the classroom with other students, such that they would have been unable to leave if an emergency occurred. Students would repeatedly pound on her classroom door and interrupt her classes. One student falsely reported that claimant had touched him inappropriately; two other students later falsely claimed that claimant had touched them inappropriately. The allegation became a joke among the students in claimant's classroom. The students were not given any consequences for their behavior.

(4) Claimant regularly felt unsafe in her classroom because of the physical threats. Claimant felt unsafe because of the false allegations, too, which she felt could cause reputational harm or retaliation from parents of the children falsely accusing her. Claimant's supervisor repeatedly instructed claimant to meet individually with her students' parents to discuss the false allegation. Claimant thought the supervisor was not responding appropriately to her concerns, and did not want to meet individually with parents because she thought it would create more problems and further endanger her.

(5) Claimant complained about the safety problems at staff meetings, and was subsequently prohibited from attending those meetings. Claimant sought help from the employer to remedy the unsafe conditions in her classroom. Claimant's direct supervisor did not help her, nor did her supervisor's supervisor. Claimant reported the unsafe working conditions and her concerns to three people with her union. She understood that the union would pursue a grievance when the time was right, and that the union was taking her concerns to upper management. Nothing changed as a result of any of her requests for help.

(6) A few days prior to March 18th, claimant met with her supervisor. The supervisor was "extremely agitated, intense, uh, aggressive speaking. Aggressive with his body language." Transcript at 38. The supervisor appeared to be "extremely upset" and "raised his voice a lot." Transcript at 38-39. Claimant felt unsafe and uncomfortable in the room and tried to leave several times, but the supervisor pulled her back in. The supervisor tried to shut the door, but claimant opened it because she felt uncomfortable and wanted others to hear what was happening.

(7) Claimant's supervisor and the supervisor's supervisor scheduled a meeting with claimant for March 18th. The purpose of the meeting was to discuss claimant's performance, specifically, claimant's "fit and work" in the program. Transcript at 68. The meeting was not supposed to be disciplinary or pre-disciplinary, but claimant's supervisor suggested claimant would want to bring a union representative with her to the meeting.

(8) Claimant decided not to attend the March 18th meeting because she felt too uncomfortable with her supervisor after their meeting a few days earlier. Claimant felt "the school was out of control. The administrators were dismissive . . . they abandoned me in a situation that clearly needed an intervention of some kind and there was nothing." Transcript at 42. Claimant had gone through three union representatives, and, through them, tried to go above the supervisory level to human resources or the superintendent. Transcript at 52.

(9) Claimant asked her union representative to attend the March 18th meeting in her place, and to speak on her behalf. Claimant gave the union representative a letter of resignation, and asked the union representative to communicate that she "was done" teaching the alternative education class but would like to continue to "work anywhere else in the district" to fulfill her contract, "anyplace besides there." Transcript at 42. The employer did not have any other positions available to her.

(10) Claimant did not return to work for the employer after March 18, 2019. Effective March 31, 2019, claimant voluntarily quit her job with the employer.

(11) Had claimant not chosen to quit her job, it would have ended when her contract expired at the end of the 2018-2019 school year. The employer did not have plans to renew claimant's contract or reappoint her to any position. Claimant was allowed to apply for a position with the employer for the 2019-2020 academic year. The employer would take claimant's performance during the 2018-2019 academic year into account when deciding whether to hire claimant for the 2019-2020 academic year.

(12) On August 16, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant's weekly benefit amount was \$648.

(13) Claimant's base year was April 1, 2018 through March 31, 2019, and all of claimant's base year wages were from employment by educational institutions, including Greater Albany Public School.

(14) The break between Greater Albany Public School's academic years was June 16, 2019 to August 31, 2019. Claimant claimed benefits from August 11, 2019 through August 31, 2019.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause, and benefits are payable during Greater Albany Public School's summer recess period.

Voluntary leaving. 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.

Order No. 19-UI-138438 concluded that claimant quit work without good cause because her working conditions were “certainly unpleasant” but “not grave,” and that a similarly situated reasonable and prudent person would have “complained to higher authorities” about her concerns rather than quitting work. Order No. 19-UI-138438 at 3. The preponderance of the evidence in the record does not support that conclusion.

Claimant regularly experienced threats of physical violence and harm at work, and false allegations that threatened to harm her reputation and future employability. She complained about her working conditions and asked for help to resolve her safety concerns at staff meetings, to her direct supervisor, the supervisor’s supervisor, and three union employees, and believed the union employees were advancing her complaints to the superintendent and human resources. Based upon her complaints, she was barred from attending staff meetings, her direct supervisor yelled at her inappropriately in mid-March, her supervisor and supervisor’s supervisor planned to meet with claimant about her performance rather than about her concerns, and her complaints to the union did not result in any changes to her working conditions. No reasonable and prudent person would have concluded that additional complaints would be treated differently than the complaints she had already made. There were no transfer opportunities available to claimant at the time she decided to quit; therefore, claimant’s only options were to quit work, or to continue working in an unsafe environment she was ill-equipped to handle and knew would not change. No reasonable and prudent person would continue working under those conditions. Claimant therefore left work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of her work separation.

School recess. ORS 657.167(1) and (2) prohibit benefits based upon services for an educational institution performed in an instructional, research or principal administrative capacity from being paid “for any week of unemployment commencing during the period between two successive academic years or” terms, “if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms.” In sum, the conditions that must be met for the between-terms school recess denial to apply to claimant are these: (1) the weeks claimed must commence during a period between two academic terms; (2) claimant must not have been “unemployed” during the term prior to the recess period at issue; and (3) there is reasonable assurance of work during the term following the recess period at issue.

Order No. 19-UI-138528 concluded that claimant’s base year wages were from educational institutions, the weeks claimed commenced during a period between two academic years, and that claimant was not unemployed during the term prior to the recess period at issue. Order No. 19-UI-138528 at 4. The preponderance of the record supports those conclusions. However, the order also concluded that claimant had reasonable assurance of work during the term following the recess period, and therefore was not eligible for benefits during Greater Albany Public School’s summer recess period. Order No. 19-UI-138528 at 4-5. The record does not support that conclusion.

OAR 471-030-0075(4) (April 29, 2018) states, “An individual who voluntarily leaves work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person left work.” Claimant left work for good cause, as indicated in this decision. Because claimant quit work with good cause, she did not have reasonable assurance. Benefits claimed by claimant that are based upon claimant’s educational institution earnings therefore are payable to claimant during the summer recess period.

DECISION: Order No. 19-UI-138438 and Order No. 19-UI-138528 are set aside, as outlined above.

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

DATE of Service: December 3, 2019

NOTE: These decisions reverse orders 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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