

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1069

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 144002). Claimant filed a timely request for hearing. On October 18, 2019, ALJ S. Lee conducted a hearing, and on October 25, 2019 issued Order No. 19-UI-138760, affirming the Department's decision. On November 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

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).

FINDINGS OF FACT: (1) Glisan Care Center Inc. employed claimant as a payroll benefits coordinator from March 12, 2019 to August 19, 2019.

(2) The employer had a staffing phone that employees were to call or text when they were not able to report to work for their scheduled shifts. The staffing phone had to be carried and answered by an employee 24 hours per day/seven days per week, and whoever carried the staffing phone then had to try to fill the absentee employees' shifts as quickly as possible.

(3) Between June 4, 2019 through August 18, 2019, claimant was primarily responsible for carrying and answering the staffing phone. Claimant disliked having to carry the staffing phone 24/7, and thought it "can drive somebody crazy." Transcript at 30. Claimant suggested it would be a good idea on weekends if the people overseeing weekend employees carried the staffing phone instead of her. The employer took claimant's suggestion into consideration. On occasion, the employer's administrator or someone else carried the staffing phone, including when claimant was on vacation.

(4) On June 10, 2019, the employer gave claimant a coaching plan that described several areas in which claimant's performance needed to improve, including her attendance. Claimant recalled leaving early on only one occasion in May because of a personal emergency, and thought she was being singled out for attendance tracking.

(5) On June 21, 2019, claimant contacted her human resources (HR) representative because she was "quite upset" about the coaching plan. Transcript at 7. She also complained that she was singled out as the only employee whose attendance was being tracked. Claimant was mistaken about that because the administrator tracked everyone's attendance. Also on June 21, 2019, claimant met with the administrator. Claimant requested additional training and that she be provided a daily checklist to assist her in completing all her tasks. The administrator made notes about claimant's training requests and agreed she would work on creating a checklist for claimant. As of July 9, 2019, the administrator believed that claimant agreed all of her training needs had been met.

(6) On August 8, 2019 the administrator gave claimant a final warning for unsatisfactory job performance. The administrator had observed that claimant made mistakes in every aspect of her job, and there were some tasks the administrator performed due to claimant's errors. Claimant refused to sign the warning because she thought it was based on an accounts payable error she had not made.

(7) On August 15, 2019, claimant called HR about the final warning letter. The HR representative investigated claimant's concerns and had a two-hour conversation with the administrator about claimant's complaints.

(8) On August 18, 2019, claimant was carrying the staffing phone when her ward had a medical emergency. Claimant got back to the phone as soon as she could. Claimant received a message from an employee who stated she did not want to work again that night. Claimant had difficulty finding coverage, and asked the administrator if she could offer a \$20 bonus to anyone who would cover the shift. The administrator said no, because the same employee who had told claimant she did not want to work was actually going to work the shift. Claimant felt like she had been given the responsibility to staff the facility for that shift, but was not given the ability to do that task.

(9) On August 19, 2019, claimant told the administrator that she was resigning immediately. The administrator asked why, and claimant responded that she was quitting because of the staffing phone. Claimant returned the staffing phone and left work.

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 had concerns about her working conditions, including her belief that she had not been adequately trained or provided with adequate resources, and her feeling that she was singled out by the administrator for attendance tracking. Despite those concerns, claimant did not decide to quit work until August 19th because of her frustration over being given responsibility for the staffing phone without being given the ability to actually do the staffing. It is therefore more likely than not that the staffing phone was the proximate cause of claimant's decision to quit work.

Claimant did not show that carrying the staffing phone was a situation of such gravity that she had no reasonable alternative but to quit work for that reason. Although claimant had been primarily responsible for the staffing phone for the two months prior to quitting work, the administrator and others had sometimes carried the phone for her, which suggests that it was likely a reasonable alternative for claimant to ask someone else to take the phone for her on occasions when she was not available, or needed a break from the staffing phone. Claimant also had suggested that the employer change its staffing phone policy to have others carry the phone on the weekend. Rather than quitting work over the staffing phone, it was a reasonable alternative for claimant to ask for help with the staffing phone, and possibly to check with the administrator or HR to ask if they would change the policy to relieve her of having 24/7 staffing phone duty. Claimant did not establish that her concerns over the staffing phone were so grave that she had no reasonable alternative but to quit work.

Even if claimant's other concerns contributed to her decision to quit work, claimant also did not show good cause to quit work. On this record, it appears that claimant's belief that she was singled out for discipline due to her attendance was mistaken. She did not have good cause to quit work due to a mistaken belief. She also had previously requested additional training and been provided with coaching and assistance, and requested assistance from HR to obtain it. HR also had investigated each time claimant reported a complaint or concern. On this record, it appears that rather than quitting work due to her training concerns, claimant had the reasonable alternative to ask the administrator for additional training or resources, and ask HR for additional training if she felt the administrator was not responsive enough. Claimant did not establish that she had good cause to quit work because of a lack of training or being singled out for discipline.

Claimant had the burden to show that she quit work with good cause, and, for the reasons stated above, has not met her burden. Claimant voluntarily left work without good cause, and is disqualified from receiving benefits based on this work separation.

DECISION: Order No. 19-UI-138760 is affirmed.

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

DATE of Service: December 17, 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

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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