

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1108

Reversed
Disqualification

PROCEDURAL HISTORY: On September 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause, and disqualifying her from unemployment insurance benefits effective August 25, 2019 (decision # 105215). Claimant filed a timely request for hearing. On October 28, 2019, ALJ Wyatt conducted a hearing, and on November 5, 2019 issued Order No. 19-UI-139252, reversing decision # 105215 and concluding that claimant voluntarily quit work with good cause. On November 21, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

Both the employer's argument and claimant's argument contained information that was not part of the hearing record, and neither party showed that factors or circumstances beyond their reasonable control prevented them 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, and written arguments based upon that information, when reaching this decision.

FINDINGS OF FACT: (1) Child Care Center of Peace at Evangelical Lutheran Church employed claimant as a teacher from January 21, 2019 to August 30, 2019.

(2) On June 28, 2019, claimant overheard a conversation between two teachers who were talking about a third coworker who had restrained a child's hands by tying them behind her back. Claimant did not see that incident. One of the teachers told the other that they needed to report the incident to the director. The director was not notified about the incident. However, claimant thought someone sent the director text messages about the incident, and the director did not do anything to address the situation. Claimant reported the incident to the child abuse hotline.

(3) The employer put a line of tape on the floor near the front door for safety reasons, so the kids at the daycare would know to stay behind the tape line in a safe area. On July 26, 2019, a child crossed the tape line and a teacher told her not to; the child then ran back away from the line. Claimant thought one of the teachers in the area "verbally attacked" the coworker who had called out to the child. Transcript at 10. Claimant considered the incident to involve child abuse. She thought the pastor, who was present at

the time of the incident, would see that something was done about the situation. Claimant also thought the director, who had been contacted, would do something. Claimant thought the pastor and director did not do anything to resolve the situation. The director had actually investigated the incident, terminated a teacher's employment, and reported the incident to the child abuse hotline the following Monday.

(4) On August 15, 2019, one of the same teachers involved in the July 26th situation became "frustrated" and "screamed at" the children in her class. Transcript at 10-11. The teacher told claimant about the situation. Claimant thought the teacher should have handled things more calmly. Later the same day, the teacher yelled at the children and behaved in an irritated manner toward them. Claimant felt the teacher's behavior was child abuse. Claimant had told the director that she overheard a teacher yelling at students on one occasion; the director spoke with the teacher about it and told her about a few ways she could get the kids' attention without yelling at them.

(5) Claimant had reported that teacher, and other concerns, to the director. She perceived that the director did not do anything about her complaints. The pastor was out on medical leave and was not around to hear complaints, and claimant could not reach the board members. Claimant called the child abuse hotline to report potential abuse when she saw it.

(6) Claimant asked the director if she could attend a board meeting. She understood the director to say that claimant was not allowed to attend. However, the employer posts the dates and times of its board meetings in its newsletter, which it keeps available for everyone near the sign in computer. The newsletter said that the meetings are open to the public. Claimant could not attend the meeting anyway because they were later in the evening and claimant had to get her kids home from school.

(7) Claimant's kids attended the employer's school, and claimant thought teachers did not tell parents about important things that happened at school. On one occasion, claimant's daughter hit her head on a post while at the school. Claimant thought her daughter's injury was bad enough that the teacher should have notified claimant so she could take her daughter to the hospital to be checked for a concussion.

(8) Claimant decided to give her two weeks' notice "with the hope of things would be changed, because if things were actually changing and I know the kids are being safe, and there wasn't – and the environment wouldn't be so hostile, then I would have no problem working there." Transcript at 12. Claimant wanted the letter to prompt action by the board to resolve the issues so she could stay in her job. Claimant's written argument, item no. 2.

(9) On August 16, 2019, claimant wrote a letter resigning her position effective August 30, 2019. She addressed her letter to the employer's board and gave it to the pastor to give to the board. She wrote the letter "to notify the Board in hopes that they would create some changes in the daycare areas to make it safer for the children and the staff." Transcript at 8. She did not give the letter to the director.

(10) Approximately one and a half weeks after claimant gave the pastor her letter, claimant spoke with a board member, who said that neither she nor the board had received claimant's resignation letter. She asked the board member if she could attend a board meeting, and the board member said she "was absolutely more than welcome" and encouraged claimant to attend. Transcript at 8.

(11) On August 30, 2019, claimant's last day of work, she called the child abuse hotline to report that a teacher had locked kids in a room with a water heater and broken toys. There was a sign on the door to that room that said "Children cannot be in here without a teacher." Transcript at 18. Claimant had also reported to the director that kids were helping do the laundry, and a teacher pulled a kid back in the room when they tried to leave. Neither claimant nor anyone else had reported to the director that the kids had been locked in the room. Claimant left work at the end of her shift pursuant to her notice of resignation.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

The order under review concluded that claimant quit work with good cause due to her concerns about how staff treated children and her perception that the employer's director was not responsive to her concerns.¹ The order concluded, "The claimant persuaded me that she faced a grave situation where she had no reasonable alternative other than to quit work. I conclude that claimant quit work with good cause."² The record does not support that conclusion.

Claimant did not quit work because of her concerns about other teachers' behavior toward students, she quit work because she perceived that the employer did not do enough to address those concerns. She hoped that her resignation, accompanied by a detailed letter to the employer's pastor and board, would prompt the employer to resolve her concerns and thereby allow her to continue working.

Claimant's perception that the employer, specifically the director, was apathetic to her reports of teacher abuse or improper behavior was not a grave situation, because her perception was not based upon the facts. The director did in fact investigate reports of abuse and improper behavior of which she was made aware, and took action to resolve them. In one instance, the director coached a teacher about finding different ways to get kids' attention without yelling. In another instance, the director fired a teacher and reported the situation to the child abuse hotline. Other incidents that concerned claimant were not reported to the director.

Rather than quit work when she did, claimant had the reasonable alternative of talking to the director about all of her concerns. Claimant also had the option to follow up with the director by asking whether or not the director had investigated or taken action to resolve the situations claimant reported; although the director likely could not reveal the details of any personnel actions that resulted from complaints, she

¹ Order No. 19-UI-139252 at 2.

² Order No. 19-UI-139252 at 3.

might have been able to assure claimant that she had investigated and taken appropriate action. Claimant also had the alternative of going to a board meeting to make her complaints and concerns known. Although claimant alleged that the director told her she was not permitted to attend board meetings, the employer published the dates and times of all board meetings in the newsletter, and made the newsletter available. Claimant therefore knew or could easily have made herself aware of the board meetings, and attended if she wanted to do so.

The circumstances under which claimant quit work were not grave, and she had reasonable alternatives to quitting when she did. Claimant therefore left work without good cause, and is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-139252 is set aside, as outlined above.

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

DATE of Service: December 24, 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ បើសិនជាលោកអ្នកមិនបានបំពេញតម្រូវការនេះទេ រដ្ឋអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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