

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1129

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct connected with work (decision # 85355). The employer filed a timely request for hearing. On November 13, 2019, ALJ Shoemake conducted a hearing, and on November 25, 2019, issued Order No. 19-UI-140235, concluding that claimant voluntarily left work without good cause. On December 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Stanfield School District No. 61R employed claimant as a teacher from August 20, 2015 to June 10, 2019.

(2) Claimant had a contract with the employer to work as a teacher from August 2018 through the end of the 2019-2020 school year in June 2020.

(3) The employer developed concerns about claimant's work performance, and in December 2018, placed her on a "plan of assistance" to help improve her work performance. Transcript at 8. After the plan of assistance was initiated, the school principal stopped in to observe claimant's performance in the classroom approximately once per day. Although having a "plan of assistance" in a teacher's personnel file was generally considered a "kiss of death" with regard to finding employment with a different school employer, claimant believed she could be successful with the plan in improving her performance to satisfy the employer's expectations and continue her employment beyond June 2020. Transcript at 13.

(4) Also in December 2018, claimant met with the district superintendent to express her concerns about how a non-tenured employee was being treated based on apparent intolerance of social “differences” between that employee and others. Transcript at 20. Claimant did not identify a particular offender and reported her observations with the hope that the environment would improve. However, a short time later, at a staff meeting, it was reported that someone had spoken to the superintendent about the school environment. The comment upset the principal, and after hearing the comment, the principal walked over to claimant and leaned over her.

(5) After the staff meeting, the principal increased her observations of claimant to approximately three times per day, which in turn, increased claimant’s anxiety over her plan of assistance. Her anxiety increased to the extent that she obtained a letter from her physician requesting an accommodation from the employer by reducing the number and frequency of the principal’s classroom visits. The employer did not grant claimant’s request for that accommodation.

(6) On February 28, 2019, a meeting was held between claimant, the superintendent, the principal, and claimant’s union representative. The group discussed claimant’s performance under the plan of assistance and claimant was informed that the employer intended to send her a “letter of intent to recommend non-extension” of her employment contract scheduled to end in June 2020. Transcript at 8-11. After the meeting, claimant discussed the status of her employment with her union representative. They concluded that a successful result under the plan of assistance was doubtful and that claimant should explore the possibility of a resignation in lieu of discharge, not for any misconduct, if the employer would agree to remove the plan of assistance from claimant’s personnel file. Claimant’s union representative approached the employer about such a resolution.

(7) On March 4, 2019, the employer’s superintendent sent claimant a “letter of intent to recommend non-extension” of claimant’s employment contract scheduled to end in June 2020.

(8) On March 7, 2019, claimant, her union representative, and the employer executed a “Separation Agreement” with the employer’s agreement to remove the plan of assistance from claimant’s personnel file upon her resignation effective at the end of the 2018-2019 school year. Exhibit 1.

(9) Effective June 10, 2019, claimant resigned from her employment to avoid having a plan of assistance included in her personnel file, which was considered the “kiss of death” for teachers attempting to find new employment with a school employer.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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). “[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 the employer for an additional period of time.

Order No. 19-UI-140235 concluded that claimant quit work without good cause, reasoning:

The claimant quit her job because she did not feel that she would have a fair opportunity to meet the employer's expectations over the next school year and did not want a negative mark (plan of assistance) and work performance issues affecting her future job opportunities. While the claimant's concerns are understandable, I am not persuaded that a reasonable and prudent person in like circumstances would have quit work when they were given a year to try to meet work expectations. . . . Thus, the claimant did not show that she was facing a situation so grave as to leave her no reasonable alternatives but to quit work.

Order No. 19-UI-140235 at 3. However, the record does not support the order's conclusion and reasoning.

Claimant quit her teaching job with the employer to avoid having her plan of assistance included in her personnel file, which generally was considered the "kiss of death" for teachers attempting to find new employment with a school employer. The employer's witness, a business manager, agreed that having such a plan included within a job-seeking teacher's personnel file would "probably be problematic." Transcript at 17. There was no dispute that on March 4, 2019, only three months after the plan of assistance had been initiated, and more than a year before claimant's employment contract was scheduled to end, the employer had already issued a "letter of intent to recommend non-extension" of claimant's employment contract. Nor was there any dispute that the principal who was claimant's direct supervisor apparently blamed claimant for speaking up about perceived social intolerance at claimant's school, which the principal believed made her look bad. Transcript at 20-22. Finally, the working conditions aggravated claimant's anxiety to the extent that claimant's provider recommended reasonable accommodations that would allow claimant to continue working, and which the employer refused to grant. Under those circumstances, and consistent with the advice of her union representative, claimant decided to resign from her employment provided the employer agreed to remove the plan of assistance from her personnel file, thereby removing a substantial impediment to finding future employment.

Claimant was experiencing an aggravation of her mental health condition because of the working conditions, and was facing a "kiss of death" discharge unless she and the employer agreed to end her employment without the plan of assistance being included in her file. While claimant likely could have worked for an additional period of time without being fired by the employer, those conditions suggested that she more likely than not was facing a grave situation and had no reasonable alternatives to quitting work at the time she quit. She therefore met her burden to show that no reasonable and prudent teacher in claimant's circumstances would have continued to work for the employer for an additional period of time. Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Order No. 19-UI-140235 is set aside, as outlined above.¹

J. S. Cromwell and S. Alba;

¹ 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.

D. P. Hettle, not participating.

DATE of Service: December 31, 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

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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