

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1182

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 30, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 85943). Claimant filed a timely request for hearing. On November 27, 2019, ALJ Roberts conducted a hearing, and on December 3, 2019, issued Order No. 19-UI-140591 concluding that claimant quit work with good cause. On December 20, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: During the November 27, 2019 hearing, the ALJ agreed to leave the record open until 5:00 p.m. on Monday, December 2, 2019 to give either party an opportunity to supplement the record with unsworn statements or other documentary evidence the party believed was relevant to the hearing issues. Transcript at 46-47. On December 4, 2019, the employer sent an unsworn statement from its owner concerning issues that allegedly arose during claimant's employment. The employer's submission was late and the ALJ did not admit it into the record or consider it.

The employer's December 4, 2019 submission contained information that was not part of the hearing record, and the employer did not show that factors or circumstances beyond its reasonable control prevented them from offering the information during the hearing or by the ALJ's December 2, 2019 deadline. Record Document (Employer's December 4, 2019 Fax). 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.

FINDINGS OF FACT: (1) STK employed claimant as a plant manager from July 1, 2019 until October 8, 2019. The employer's business involved manufacturing food products such as veal, chicken, lamb and beef stocks, and distributing them to various restaurants for use in meal preparation.

(2) Claimant had worked for the employer's predecessor company for approximately five years before the employer purchased it along with its buildings and equipment on July 1, 2019. At that time, the employer retained claimant as an employee. The new entity did not have its own email accounts and for that reason, asked claimant to use his personal email to set up accounts for produce and to use his own

money “upfront” to “pay for things.” Transcript at 38-39. The employer did not have an in-house human resources department, and claimant was unaware that the employer had later contracted with an off-site entity to perform some human resource functions.

(3) During claimant’s employment with the predecessor company, claimant came to know “all” the food manufacturers and United States Department of Agriculture (USDA) inspectors in the geographic area and had developed a good reputation with the USDA inspectors. Transcript at 17-18.

(4) During the first several weeks of the employer’s operation, it manufactured sample veal, chicken and beef stocks for internal testing only and kept them in a freezer. After the samples were manufactured, the employer’s plant became USDA certified, which essentially meant the manufacturing process and materials had been USDA approved and as long as USDA procedures were followed during the manufacturing process, the employer’s products were approved for general distribution.

(5) In approximately mid-September 2019, after the plant became USDA certified, the employer’s owner directed claimant to complete and sign a temperature “chilling log” that certified that the temperature of a manufactured product had decreased to 40 degrees, at a time when claimant was not present, because the owner did not want to pay claimant or anyone else to stay until the time when the product reached the target temperature. At that time, claimant told the owner that he was “uncomfortable” doing that because he believed it was “wrong and . . . didn’t want to take part of it.” Transcript at 9, 13. However, the owner directed him to certify the log anyway, which claimant eventually did because he wanted to keep his job. During September and October 2019, the same situation arose seven or eight times and claimant complied with the owner’s directions for the same reason.

(6) On October 8, 2019, the owner directed claimant to mix the remaining non-USDA certified sample veal stocks in with USDA certified veal stocks that would be sent out for general distribution to avoid wasting the samples. Claimant believed that by being so directed he again “was being asked to lie to the USDA” and “potentially contaminate product,” which he considered a “major violation of USDA regulations.” Transcript at 19-20. After mixing ingredients in that way, the product could not be fully traced to a batch number in the event of a contamination or recall.

(7) On October 8, 2019, after being directed to mix the veal stocks, claimant went to lunch with a coworker. While there, he decided to quit rather than “take part” in potentially contaminating veal stock sent out for general distribution. Claimant believed that mixing the stocks was “wrong” and illegal and he also believed his participation in mixing the stocks would negatively affect his reputation and relationship with the USDA, and potentially his career, if his role in what had occurred came to light. Transcript at 9-10. He also believed that objecting to the owner’s direction to mix the veal stocks would be ineffective because of claimant’s prior experience with the owner regarding falsifying the temperature logs, and that reporting the employer to the USDA before quitting probably would result in either termination of his employment or shutting down of the employer. At the end of his lunch, claimant asked his coworker to turn in claimant’s keys to the owner and notify him that he was “walking away” from the employment because he did not want to play any role in mixing the veal stocks. Transcript at 9.

(8) After claimant quit, he sent photographs of the veal stocks and reported the owner's instructions to him regarding mixing the stocks to the USDA inspector assigned to the employer's plant.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 their employer for an additional period of time.

As a preliminary matter, the employer's representative at hearing disagreed with claimant's allegations that the owner directed him to violate USDA regulations regarding the temperature logs and mixing stocks. However, the employer's representative admitted that she was not present during any of the conversations between the owner and claimant. Transcript at 35-36. Therefore, the employer's evidence was based on hearsay and claimant's sworn testimony was based on firsthand evidence. Absent a basis for concluding that claimant was not a credible witness, his firsthand evidence was more persuasive than the employer's hearsay. Therefore, this decision's findings are based on claimant's evidence.

Claimant quit work because he did not want to follow the owner's directions to participate in an illegal activity in mixing food stocks that could potentially result in contamination of a food product distributed to the public, and/or result in the end of his career in a USDA-related food industry. When asked whether it was a violation of USDA regulations to mix USDA certified products with non-USDA certified products, claimant testified that it was a "major violation" because it would result in "potentially contaminating a product," and if an individual became ill there likely would be no way to establish the source of the contamination. Transcript at 19-20. Viewed objectively, claimant's circumstances were grave because they put him in the position of having to choose between quitting his job or continuing to work at the job after he was directed to engage in activities that he knew were violations of federal safety regulations and that put other people's health at risk. The remaining issue is whether claimant had reasonable alternatives to quitting work when he did.

The record shows that before quitting work on October 8, 2019, claimant did not object when the owner directed claimant to mix stock samples in violation of USDA safety regulations. However, several weeks earlier, claimant objected when the owner directed him to falsify the USDA temperature logs by certifying food temperatures during a time when no one, including claimant, was authorized to be on the business premises. Despite claimant's objections at that time, the owner did not relent. To the contrary, several times after that date, under similar circumstances, the owner directed claimant to falsify temperature logs. Given that recent history, claimant reasonably concluded on October 8, 2019 that complaining to the owner about being directed to violate USDA regulations by mixing the veal stocks would have had no effect and been futile. Nor did claimant have the reasonable option of complaining to an employer human resources office because he had never been informed that the employer had a human resources office or that an off-site company had assumed some human resource functions. Finally,

complaining to the USDA about the employer's regulatory violations before quitting more likely than not would have resulted in claimant's discharge or the closure of the employer's business.

On this record, claimant established that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that he had no reasonable alternative but to quit work when claimant did. Accordingly, claimant voluntarily left work with good cause, and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 19-UI-140591 is affirmed.

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

DATE of Service: January 24, 2020

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

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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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