

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0013

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 83455). On October 31, 2019, decision # 83455 became final without claimant having filed a request for hearing. On November 1, 2019, claimant filed a late request for hearing. On November 5, 2019, ALJ Kangas issued Order No. 19-UI-139248 dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 19, 2019. On November 12, 2019, claimant filed a timely response to the appellant questionnaire. On November 20, 2019, the Office of Administrative Hearings (OAH) issued a letter stating that Order No. 19-UI-139248 was cancelled and vacated, and on December 4, 2019, served notice of a hearing scheduled for December 18, 2019. On December 18, 2019, ALJ Scott conducted a hearing and issued Order No. 19-UI-141404, allowing claimant's late request for hearing, but affirming decision # 83455. On January 6, 2020, claimant filed a timely application for review of Order No. 19-UI-141404 with the Employment Appeals Board (EAB).

With their application for review, claimant sent a written argument. 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).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**.

FINDINGS OF FACT: (1) Hearthstone Pets Inc., a retail pet supply store, employed claimant as a sales clerk from September 2018 to August 15, 2019.

(2) A pet grooming business, Paws for Elegance, was located in the same strip mall as the employer, and the two businesses often referred customers to each other.

(3) Claimant decided to apply for work at Paws for Elegance as a second job to work there on her days off with the employer. Before doing so, she texted the employer's owner and asked if the owner "would be okay" with claimant working at Paws for Elegance on her days off. Transcript at 32. The employer's owner never responded. Claimant applied for work at Paws for Elegance and was hired. Claimant prioritized her work hours with the employer and did not intend to quit work with the employer to work solely for Paws for Elegance.

(4) Around mid-August 2019, the owner of Paws for Elegance came to the employer's store and talked to the employer's owner. After their conversation, the owner of Paws for Elegance returned to his store and told claimant he "couldn't keep [her] on" because doing so would ruin his business relationship with the employer's owner. Transcript at 33. He then discharged claimant from her employment with Paws for Elegance.

(5) A day or two later, claimant's coworker of a few months at Hearthstone Pets Inc. told claimant that the coworker had heard that the employer's owner was "badmouthing" claimant by calling her a "bitch," "racist," "back stabber," and "terrible person." Transcript at 25, 27. Claimant was hurt and offended by those comments and believed the comments were probably due to her employment at Paws for Elegance because the employer's owner reportedly made the comments when speaking to the owner of Paws for Elegance.

(6) Shortly thereafter, claimant questioned the employer's manager about what she had heard from the coworker and the manager denied that the manager had made any such comments about claimant. From that conversation, claimant concluded that the comments in question must have come from the employer's owner, and not the manager.

(7) Claimant felt intimidated by the employer's owner and never questioned the owner about whether she had been "badmouthing" claimant, or had made the derogatory comments about claimant reported to her by the coworker.

(8) On August 15, 2019, claimant told the employer's manager that August 15 would be her last day because she "had heard what [the owner] was saying about [her]," and believed it was unfair because she "was a good worker." Transcript at 30.

CONCLUSIONS AND REASONS: Claimant 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.

Claimant quit work on August 15, 2019 because she believed the owner had been “badmouthing” her unfairly and undeservedly. Although hearing that she was called a “bitch,” “racist,” “back stabber,” and “terrible person” by the owner, particularly if the owner had used those terms when speaking about claimant to another one of claimant’s employers, may have constituted a grave situation for claimant, claimant never asked the owner about the allegation that the owner had made those comments before quitting. Claimant’s source of information was a coworker whom she had known for only a short time and he may not have been a reliable source. Moreover, even though the owner of Paws for Elegance told claimant that he was discharging claimant because continuing her employment would negatively affect that owner’s business relationship with the employer’s owner, there was no indication from him that the employer’s owner ever made derogatory comments about claimant to him. Viewing the record as a whole, claimant failed to show that her concerns constituted reasons of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period of time rather than quit before discussing the issue with the owner. Discussing the issue with the owner first was a reasonable alternative to quitting work when claimant did.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she requalifies for benefits by earning at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-141404 is affirmed.

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

DATE of Service: January 31, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.