

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0017

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause (decision # 171451). Claimant filed a timely request for hearing. On December 19, 2019, ALJ S. Lee conducted a hearing, and on December 26, 2019 issued Order No. 19-UI-141729, affirming decision #171451. On January 4, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. In her argument, claimant asserted, in part, that the hearing proceedings were unfair or the ALJ was biased. However, EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave claimant a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) The Joinery employed claimant as a part-time accounts payable/receivable employee from October 14, 2019 until October 28, 2019.

(2) Claimant was being trained on a new software program by the benefits manager, who was scheduled to leave the business by the end of the calendar year. Another person who worked with claimant was going to become claimant's new supervisor once the benefits manager left. The training occurred during a time in which the employer was in the process of relocating to the St. Johns neighborhood in Portland, Oregon. Relocation preparations added to everyone's stress level at work.

(3) Due to claimant's part-time work schedule, she had limited time to get familiar with the new software program. However, her current and future supervisors thought that claimant's skill at using the new software should have been much higher than it was. Claimant's future supervisor also was not receptive to claimant's requests for assistance.

(4) On October 24, 2019, claimant met with her current supervisor to discuss her concerns about her future supervisor. Claimant stated that she did not find her future supervisor to be supportive of her

training needs, and that claimant was having difficulty communicating with her due to her strong accent. Claimant's current supervisor listened to claimant, but did not provide claimant any feedback or suggestions.

(5) On October 28, 2019, claimant's current and future supervisors met with her to go over some things before the employer's move to St. Johns. During this meeting, claimant's current supervisor told claimant that her training was not going well, and that she was not learning fast enough, asked too many questions, was relying on them too much, and needed to "Fly, little birdie, Fly!" Exhibit 1. Claimant left the meeting feeling humiliated. That evening, she sent the supervisors and the employer's owner an email stating that she would not be returning to work for the employer.

(6) On October 29, 2019, the owner of the business called claimant to apologize, saying that he blamed himself because of the stress he was under due to the employer's move, that he understood why claimant would not be returning to work, but that he was disappointed and thought everything would have worked out.

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 quit her job with the employer because she felt humiliated after a meeting with her current and future supervisors on October 28, 2019. During the meeting, claimant's current supervisor told her that her training was not going well, and that she was not learning fast enough, asked too many questions, was relying on them too much, and needed to "Fly, little birdie, Fly!" Exhibit 1. Viewed objectively, however, the supervisor's behavior during the meeting was not so egregious that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for their employer for an additional period of time. Claimant did not assert or show that the supervisor yelled at her, used foul language, or was otherwise abusive. The supervisor's criticism, and the way in which she phrased it, were not of such gravity that claimant had no reasonable alternative than to quit work after only two weeks of employment.

Rather than do so, claimant had the reasonable alternative of continuing to work for the employer, at least until after it completed its move to another location, which was adding to everyone's stress level at work, and see if the situation improved. Claimant also had the reasonable alternative of contacting the employer's owner and allowing him an opportunity to address the situation before she quit work. Given the owner's sympathetic response to claimant's resignation email, the record fails to show that he would not have been supportive of claimant, or that he would not have attempted to resolve the situation by, for

example, instructing the supervisors to be more patient with claimant while she was still learning the employer's software program.

Claimant failed to establish that she had good cause for leaving work when she did. She therefore is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 19-UI-141729 is affirmed.

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

DATE of Service: February 6, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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