

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0019

Affirmed
Eligible Weeks 40-19 and 41-19
Disqualification Effective Week 42-19

PROCEDURAL HISTORY: On November 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause (decision # 171802). Claimant filed a timely request for hearing. On December 12, 2019, ALJ Shoemake conducted a hearing, and on December 18, 2019 issued Order No. 19-UI-141412, affirming the Department's decision. On January 7, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Colleen Benson Homes LLC, a residential real estate company, employed claimant as an administrative assistant from November 16, 2017 to September 30, 2019. Claimant was paid a salary plus a \$100 bonus for every real estate transaction that closed during a given month.

(2) Over the last several months of claimant's employment, claimant experienced increasing stress and anxiety over her interactions with the employer's owner concerning her work schedule. At times, the owner permitted claimant to work less than a 40-hour workweek to permit her to spend more time with her family, while at other times, the owner required claimant to work a full schedule to get more work from her. The owner's inconsistent approach to claimant's work hours caused claimant anxiety to the extent that it negatively affected her home life and work performance. However, the anxiety and stress claimant experienced did not cause her to seek medical treatment or advice from a medical provider.

(3) In early July 2019, claimant's bank account was temporarily closed due to fraud-related issues. The employer's direct deposit of claimant's salary into her account was frozen by the bank pending resolution of the outstanding issues. Claimant became concerned about her inability to pay her bills due to the bank hold, and explained her predicament to the employer's owner, who issued claimant a separate check for \$600 on the agreement that the employer would be reimbursed when the hold was resolved.

(4) By late September 2019, the employer had not yet been reimbursed. On or about September 30, 2019, the owner sent claimant an email and told claimant in person that she wanted to discuss the issue with claimant in a meeting. Claimant declined to do so, explaining to the owner that she “was not in the right head space” to discuss it at that time. Audio Record at 19:00 to 20:30.

(5) On the afternoon of September 30, 2019, the owner sent claimant a text message that \$600 would be deducted from claimant’s next check. Within 10 minutes of receiving that text message, claimant responded to the owner that she was quitting with two weeks’ notice, effective October 13, 2019. Claimant sent the owner her resignation notice because she was upset that the owner wanted to deduct \$600 from her next check without sufficient notice, and also believed the owner was depriving her of six \$100 bonuses, which the owner did not intend to do. That evening, the owner sent claimant a responsive text message that stated, in relevant part, “I will honor and pay you for your two weeks . . . I will no longer need your services however, so please understand today is your last day. I wish you the best.” Audio Record at 23:00 to 24:30.

(6) On September 30, 2019, the employer discharged claimant because the owner did not want claimant to remain in the office until October 13, 2019, because claimant gave notice that she planned to quit and had access to the employer’s bank accounts and credit card.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct, within 15 days of claimant’s planned quit without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

On September 30, 2019, claimant notified the owner by text message that she was quitting work effective October 13, 2019. However, later on September 30, the owner told claimant, “. . . I will no longer need your services . . . so please understand today is your last day.” Because claimant was willing to continue working for the employer until October 13, but was not allowed to do so by the employer, the work separation was a discharge that occurred on September 30, 2019.

The owner explained that she discharged claimant the same day she received claimant’s September 30 text message because she no longer needed claimant’s services, and because the owner was uncomfortable with claimant still having access to the employer’s accounts even after claimant gave notice she would quit. Audio Record at 23:00 to 25:00. The employer did not discharge claimant because she had engaged in conduct the owner considered a willful or wantonly negligent violation of standards of behavior the employer had the right to expect of her. Accordingly, the employer did not discharge claimant on September 30, 2019 for misconduct. *See* OAR 471-030-0038(3)(a).¹

However, ORS 657.176(8) states, in relevant part, that “when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving

¹ “As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest is misconduct.” OAR 471-030-0038(3)(a).

would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.”

Claimant notified the owner she would end her employment on October 13, 2019. The employer then discharged claimant, not for misconduct, on September 30, 2019, less than 15 days prior to her planned quit date. Therefore, to determine if ORS 657.176(8) applies to this case, it is necessary to determine whether claimant’s planned quit would have been with or 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). “[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 submitted her two-week resignation notice when she did because she believed that the owner wanted to deduct \$600 from her next check without sufficient notice, and also believed the owner intended to deprive her of six \$100 bonuses by doing so, which the owner did not intend to do. At hearing, claimant explained that she understood the owner’s text message to mean that the owner “was reducing my pay \$600 for pay I had already earned and done the work for with no notice.” Audio Record at 15:25 to 16:00. However, at hearing, the owner explained that she “wasn’t taking away any of [claimant’s] bonuses,” but, rather, was only seeking reimbursement for the extra \$600 check she wrote for claimant in July. Audio Record at 25:15 to 28:00. More likely than not, claimant misunderstood what the owner intended to accomplish by deducting \$600 from claimant’s next payroll check. However, at the time claimant sent her resignation notice, the \$600 had not yet been deducted from claimant’s check, and claimant had declined the owner’s prior invitation to meet and discuss the repayment matter. Although not receiving the \$600 in her next check may have been a legitimate concern for claimant, she could have accepted the owner’s prior invitation to discuss the issue rather than send notice of her intent to quit. Given the owner’s willingness to give claimant an extra check for \$600 in July to alleviate claimant’s concerns over her inability to pay her bills at that time, a mutually satisfactory arrangement probably could have been reached, eliminating claimant’s desire to notify the owner of her intent to quit. Because claimant had the reasonable alternative of discussing the repayment issue with the employer before she gave notice of her planned quit, claimant failed to show that no reasonable and prudent person in claimant’s circumstances would have continued to work for the employer for an additional period of time.

To the extent claimant forwarded her intent to resign because she wanted to eliminate the stress of working for the employer, claimant also failed to establish good cause. Claimant admitted that the stress

she described experiencing as a result of the owner's conduct was not so serious that she sought medical advice or treatment before deciding to quit. Audio Record at 14:30 to 15:30. Viewing the record as a whole, claimant failed to show that a reasonable and prudent person under the same circumstances would have considered her working conditions so grave that she had no reasonable alternative but to submit a resignation notice when she did.

Because claimant's planned quit on October 13, 2019 would have been without good cause for the reasons stated, ORS 657.176(8) applies.

To summarize, claimant notified the employer of her intention to quit work without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits, effective October 13, 2019, and until she requalifies for benefits pursuant to ORS 657.176(2), but is eligible for benefits for the weeks including September 29 through October 12, 2019 (weeks 40-19 and 41-19), which are the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

DECISION: Order No. 19-UI-141412 is affirmed.

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

DATE of Service:

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

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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