

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0058

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153539). Claimant filed a timely request for hearing. On January 3, 2020, ALJ Janzen conducted a hearing at which the employer failed to appear, and on January 6, 2020, issued Order No. 20-UI-142124, affirming the Department's decision. On January 22, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: On January 24, EAB mailed the parties notice of receipt of claimant's application for review. The notice stated that parties could submit written argument within 20 days of the date the notice was mailed. Written arguments were therefore due no later than February 13, 2020. On February 13, 2020, claimant did not submit written argument, but requested an extension for doing so. EAB denied claimant's request for an extension for the following reasons.

First, claimant failed to show that he made the request promptly after becoming aware of the need for the extension, as required under OAR 471-041-0080(4)(a)(B) (May 13, 2019). Claimant provided no reason for why he waited until February 13, 2020 to request an extension for submitting the written argument. Second, claimant did not provide information regarding circumstances that made an extension necessary or why any such circumstances were beyond claimant's reasonable control. Claimant presumably received the acknowledgment letter shortly after January 24, and absent evidence of circumstances making an extension necessary, it was within claimant's reasonable control to act sooner to submit written argument by the deadline. OAR 471-041-0080(4)(a)(D), (b)(A). Finally, claimant did not provide information showing that the failure to allow an extension would result in undue hardship to claimant. OAR 471-041-0080(4)(a)(D), (b)(B). Claimant explained that he disagreed with how Order No. 20-UI-142124 presented the facts of the case, but failed to show that denying an extension would cause an undue hardship. EAB will review the entire hearing record.

To the extent claimant's request for an extension to file their written argument contained argument, EAB did not consider claimant's written argument when reaching this decision because they did not include a

statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a).

FINDINGS OF FACT: (1) University of Oregon employed claimant as a radiology technologist until October 10, 2019.

(2) During the last two years of claimant's employment, claimant's coworkers made six complaints against him to management.

(3) In November 2018, claimant tried to give a female coworker who worked in the front office a fortune cookie containing a note asking her out on a first date. The coworker refused the cookie, stating, "I'm gluten free." Transcript at 6. Claimant told her, "[T]here's something in there for you," and left it on her desk. Transcript at 6. The employer did not prohibit dating between coworkers. The coworker did not respond to claimant's note. About one week later, claimant's manager met with claimant and told him there had been a complaint about him. As a result, claimant tried to "stay away from the front staff." Transcript at 6. After November 2018, claimant "sensed a little tension" from the front office staff. Transcript at 8.

(4) In December 2018, claimant "chatted here and there" with one of the front office female reception workers. Claimant told her that it was "sort of foolish" for him to give the other employee a fortune cookie. The reception worker complained to the employer about claimant's statement, because "she thought [claimant] was asking her out." Transcript at 8. Claimant's manager met with claimant about the complaint.

(5) Sometime in early 2019, claimant was wearing a stethoscope around his neck while working. Claimant did not use a stethoscope for work. A coworker told claimant it was inappropriate to wear a stethoscope because only the doctors wore them. Transcript at 9. A coworker complained to the employer about claimant wearing a stethoscope.

(6) During the spring of 2019, claimant saw a female IT staff person using a bench and working on a video monitor. Claimant asked her if she "needed a tall man to help [her] with that." Transcript at 10. She replied, "Oh, no, I got it." Transcript at 10. The staff person complained to the employer about claimant, alleging that claimant had acted in a "chauvinistic," "sexist" manner. Transcript at 10. Another coworker complained that claimant "wandered too much." Transcript at 11.

(7) Due to the complaints against him, claimant was "starting to feel harassed," and concerned about his job security. Transcript at 12. In the spring of 2019, claimant complained to the employer about the other employees' complaints about him. Claimant also filed a complaint with the Bureau of Labor and Industries alleging a hostile work environment due to the complaints filed against him. The employer did not resolve claimant's complaint to his satisfaction.

(8) Claimant never had any patient complaints or complaints from students. Claimant's manager found the complaints from his coworkers during 2018 and 2019 to be "completely unfounded." Transcript at 19.

(9) The employer set a pre-termination hearing for October 10, 2019.¹ At the pre-termination hearing, claimant learned that he was not permitted to record the hearing. Claimant felt “manipulated” by the employer’s hearing process and that his union representative at the hearing was not “really representing [him] entirely” or giving him “the best advice,” and for those reasons, decided to quit at that time. Transcript at 16, 22. Neither claimant’s representative nor an employer representative told claimant that his best option was to quit on October 10, 2019.

CONCLUSIONS AND REASONS: EAB agrees with the Department and Order No. 20-UI-142124 and concludes that 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 work at his pre-termination hearing on October 10, 2019 because he was dissatisfied with the hearing process and the representation he received from his union representative. Although claimant may have faced a grave situation at work due to being in a pre-termination hearing, the record does not show that claimant faced inevitable discharge, and he therefore had the reasonable alternative of participating in the hearing and providing his information to the employer to avoid termination. When asked why he felt his union representative was not giving him “the best advice,” claimant chose not to answer the question. Transcript at 22. However, assuming the representative was incompetent in his role, claimant had the reasonable alternative of refusing to take the representative’s advice, and presumably could have asked for a different representative or complained to the union about the representative.

Even assuming, *arguendo*, that claimant was facing inevitable, imminent discharge not for misconduct, and had no alternatives that would allow claimant to avoid discharge, the record does not show that claimant had good cause to leave work to avoid discharge because the record contains no evidence as to what effect a discharge would have on claimant. *McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects). When asked if claimant was aware of any adverse consequence of being discharged, claimant answered, “I can’t answer that.” Transcript at 17. Therefore, the record does not establish that claimant had good cause to quit to avoid irreparable harm to claimant or future job prospects.

¹ Claimant chose not to testify as to why the employer set a pre-termination hearing on October 10, 2019. Transcript at 13-16. As the ALJ told claimant, claimant was not required to answer the ALJ’s questions, but the ALJ could only base the hearing order on the information in the record. Transcript at 14. Similarly, EAB can only base its decision on the information contained in the record.

To the extent claimant left work because he was dissatisfied with his working environment because of the multiple complaints against him, claimant did not quit work for good cause. Dissatisfaction with one's working environment can, under some circumstances, amount to a "hostile working environment" and good cause to leave work. *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the work from unemployment benefits"; the law "does not impose upon the employee the one-dimensional motivation of Adam Smith's 'economic man'"). However, although claimant disagreed with his coworkers' complaints, viewed objectively, the record does not show that the complaints were unreasonable or mean-spirited, or that claimant was otherwise subject to abuse in the workplace. The coworkers' complaints, even if unfounded, were not sufficiently serious to create a work environment that was so "oppressive" that claimant did not have the reasonable alternative of continuing to respond to the complaints through his manager, and perhaps learn from the complaints about how others perceived some of his conduct. Nor did claimant show that the work environment had a grave impact on claimant's health.

For the foregoing reasons, claimant did not show good cause to leave work at the pre-termination hearing on October 10, 2019. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-142124 is affirmed.

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

DATE of Service: February 25, 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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