

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0074

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving benefits beginning October 13, 2019 (decision # 74454). Claimant filed a timely request for hearing. On December 23, 2019 and January 8, 2020, ALJ Lee conducted hearings, and on January 17, 2020 issued Order No. 20-UI-142983, affirming the Department's decision. On January 28, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered both claimant's written argument and the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Chehalem Youth & Family Services (CYFS) employed claimant as a career development specialist in its Youth Opportunity Program (YOOP) from September 6, 2019 to October 18, 2019. Claimant originally worked in the McMinnville office and her job responsibilities included providing job coaching to youths as well as utilizing her contacts with the local McMinnville business community to help youths obtain internships so that they could learn job skills. The terms of claimant's employment included working, at times, in CYFS's Newberg office, and claimant had attended board meetings at the Newberg location and networked in the Newberg area prior to voluntarily leaving her employment.

(2) The federal government funded the YOOP program through the Workforce Innovation and Opportunity Act, with funds administered via a contractual arrangement between the Willamette Workforce Partnership (WWP) and CYFS. As such, claimant's salary was at all times federally funded.

(3) Within the YOOP suite of offices in McMinnville, a separate non-profit entity, Friends of Chehalem House (FOCH), ran its NewHub operation. FOCH paid CYFS for office space to run its NewHub operation and CYFS staffed NewHub with YOOP program interns utilizing the assistance of YOOP staff.

(4) Although CYFS hired claimant to be a career development specialist with the YOOP program, claimant initially spent 95% of her worktime supporting the CYFS annual fundraising event. Claimant's efforts supporting the fundraiser prevented her from adequately training for her role as a career development specialist.

(5) Claimant began having concerns about the legality of certain policies and practices occurring at CYFS. In particular, claimant became concerned about her efforts supporting the CYFS annual fundraising event, which she viewed as duties that did not fall under the job description of a career development specialist with the YOOP program. Claimant believed that because these duties did not fall under her job description, the duties violated the terms of the federal funding contract between CYFS and WWP. Claimant was also concerned that the relationship between CYFS and FOCH was inappropriate and that CYFS management were improperly directing YOOP staff to place YOOP interns into the NewHub operation. Claimant also believed that members of YOOP staff were improperly being tasked with performing supervision over NewHub interns, which did not fall under her job description and, she therefore thought, violated the terms of the federal funding contract between CYFS and WWP. Claimant also believed CYFS was illegally withholding her pay whenever she called out sick, while also not paying her for overtime work.

(6) On September 27, 2019, claimant raised her concerns during a conversation with a member of the CYFS board of directors.

(7) On October 4, 2019, claimant participated in a YOOP staff meeting. During the meeting, the CYFS Executive Director and the YOOP Program Manager specifically addressed claimant's concerns about internship placements with NewHub, with both taking the position that CYFS was operating in accordance with WWP operating procedures. Claimant continued to disagree and believed that CYFS management was both belittling her and dismissing her concerns. Both the Executive Director and the YOOP Program Manager informed claimant that if she disagreed that it was her responsibility to quit her employment. The employer viewed its statements as a reflection of its view that claimant should not feel that she was being forced to do something she did not want to do.

(8) On or about October 8, 2019, claimant submitted a formal written complaint with the CYFS board of directors.

(9) On October 15, 2019, claimant worked a partial day before leaving work for the remainder of the day due to a migraine and stress over her work situation. Claimant's migraines were "weird" in that they occurred "without pain" and did not give her a "headache", but caused her "facial numbness and... things going on" and did not make her feel good. December 23, 2019 hearing, Transcript at 30. Claimant had not seen a medical provider for her migraines in a year and a half because they had been "under control until a couple months ago." December 23, 2019 hearing, Transcript at 30.

(10) Also on October 15, 2019, the YOOP Program Director sent an email to claimant directing her to report to the McMinnville YOOP program on October 16 and 17 for additional training. The Program Manager also informed claimant that he was removing her from all marketing and networking activities, including the fundraiser, "until a time in the future when you will have more positive feelings about the agency and our programs." Exhibit 1, October 15, 2019 email from Program Manager to Claimant. The organization's intent was to avoid having claimant attend public events where she might "besmirch"

CYFS due to her concerns, while CYFS was actively trying work with claimant to problem solve. January 8, 2020 hearing, Transcript at 10. Claimant “was okay with not representing [CYFS] because [she] wasn’t comfortable ... representing them because [she] saw things that were going on that weren’t okay.” December 23, 2019 hearing, Transcript at 21. Claimant believed, however, that the employer’s decision to remove her from attending public events was a retaliatory action because she thought the choice not to attend public events needed to be hers, not the employer’s.

(11) On October 17, 2019, the YOOP Program Director sent claimant an email titled “Grievance Response” in order to address “stress” claimant was feeling, as relayed to him by claimant’s supervisor. Exhibit 1, October 17, 2019 email from Program Manager to Claimant. The email directed claimant to report on October 21, 2019 to the Newberg Skill Center instead of the McMinnville office, reminded claimant that she was accruing sick leave which could be used to cover days where she was absent from work due to illness, and addressed claimant’s hostile work environment claims by noting that the CYFS Board of Directors was currently investigating her complaints and that the Executive Director would avoid contact with claimant while the investigation continued. The employer’s intent was to try to make certain changes in order to address claimant’s concerns and to problem solve and to relieve her stress. The employer wanted to reach an agreeable solution to claimant’s concerns and continue their employment relationship. The employer also viewed the move to Newberg as temporary in nature in order to allow claimant to receive additional training. Claimant did not view the employer’s actions as attempts to address claimant’s concerns, rather claimant viewed the employer’s actions as retaliation because “if someone files a complaint the only response [the employer] can have is nothing.” December 23, 2019 hearing, Transcript at 20. Claimant believed that the decision to have her report to Newberg was a permanent move and that it would cause her additional travel related hardships.

(12) On October 17, 2019, claimant filed a complaint with WWP. Claimant complained about the relationship between CYFS and FOCH and the internship placements being made by YOOP staff in the NewHub operation, CYFS using YOOP staff to perform duties not authorized under the contract between WWP and CYFS, and removing claimant “from normal operations” for complaining to the CYFS Board of Directors. Exhibit 2, November 5, 2019 letter from WWP to claimant.

(13) On October 18, 2019, the YOOP Program Manager and claimant discussed claimant’s concerns about the added time and expense of traveling to the Newberg location for training. The Program Manager explained to claimant that she would be able to travel to the Newberg location using a company vehicle, and that she could travel to Newberg during her normal working hours. During the conversation, claimant informed the YOOP program manager that she quit. Claimant perceived an escalating pattern of retaliation and in light of her stress-related migraines, and believed the work situation was only going to get worse.

(14) On October 22, 2019, the CYFS Board of Directors placed the CYFS Executive Director on administrative leave based in part on claimant’s complaint. The CYFS would later terminate the Executive Director’s employment.

(15) On October 28, 2019, WWP first notified the employer of claimant’s complaint to WWP. On October 28, 2019, WWP conducted an onsite review with members of the CYFS staff. During that onsite review, WWP informed the CYFS that the YOOP program should not have its interns working

for NewHub due to concerns about the closeness of the relationship between CYFS and FOCH. CYFS discontinued its placement of interns with NewHub that day.

(16) On November 5, 2019, WWP determined that claimant's complaints against CYFS raised issues of "fraud, waste, abuse and/or retaliation" and that the complaints were "factual". Exhibit 2, November 5, 2019 letter from WWP to claimant. WWP referred claimant's fraud, waste, and abuse allegations to the Department of Labor, her improper wage allegations to the Bureau of Labor and Industries, Wage and Hour Division, and her retaliation allegations to the Bureau of Labor and Industries, Civil Rights Division. Because WWP concluded that CYFS did not follow the appropriate grievance and complaint procedures with respect to claimant's concerns, WWP issued a formal resolution requiring CYFS to conduct, and document, training with its staff on the appropriate grievance and complaint procedures.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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).

The preponderance of the evidence demonstrates that claimant could have continued working for the employer for an additional period of time. At the time of claimant's voluntary leaving on October 18, 2019, the employer was actively attempting to address claimant's numerous concerns by problem solving the issues, and one of the solutions implemented by the employer was to have claimant report to the Newberg location the following week. But for claimant's decision to voluntarily leave on October 18, 2019, the employer had every expectation that claimant would show up for work in the Newberg office on October 21, 2019. The preponderance of the evidence supports the conclusion that claimant voluntarily quit work.

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.

The preponderance of the evidence demonstrates that claimant left work voluntarily without good cause. The record reflects that during her brief period of employment with CYFS, claimant developed multiple concerns regarding the legality of some of the processes and procedures employed by CYFS in their daily business activities. Claimant's concerns generally involved: (1) the relationship between CYFS and FOCH, and the propriety of the CYFS policy of steering YOOP program interns towards internships with the FOCH'S NewHub operation; (2) the utilization of claimant and other members of the YOOP staff to perform CYFS work-related duties that were not provided for under the CYFS funding contract with WWP; and (3) pay-related concerns involving overtime pay and sick leave. Claimant methodically

documented her concerns, and then brought them to the attention of both the CYFS Executive Director and the YOOP Program Manager. When neither the CYFS Executive Director, nor the YOOP Program Manager addressed those concerns to claimant's satisfaction, she filed a formal written complaint with the CYFS Board of Directors and, later, with WWP, raising her concerns in both instances. Both of those complaints were pending at the time claimant voluntarily left employment.

Meanwhile, the record reflects that claimant's employer was attempting to resolve claimant's multiple concerns and relieve some of the stress that she was feeling to heal and maintain the employment relationship. First, the employer directed claimant to refrain from appearing at public events on behalf of CYFS due to its concerns that claimant's negative view of certain CYFS policies and procedures might lead to claimant inadvertently besmirching the organization's reputation. Claimant agreed with the rationale behind this decision. The record demonstrates that the employer intended to alleviate some of claimant's stress with temporary changes until claimant developed more positive feelings about the organization.

The employer also enacted a plan to have claimant temporarily report to the Newberg office, not only to undergo additional training, but also so that claimant could be removed from the McMinnville office which housed the NewHub operation that was causing claimant so much anxiety and stress. When claimant balked at the transportation hardships that such a move would involve, the employer attempted to accommodate claimant's concerns by authorizing her to use a company vehicle and apply the time it took her to travel from McMinnville to Newberg to her normal workday hours.

Although she understood the rationale behind the employer's decision to have her refrain from attending public events as a representative of CYFS, claimant viewed this action as retaliatory. Likewise, claimant viewed the employer's decision to move her to the Newberg office as retaliatory. The preponderance of the evidence demonstrates that under the circumstances presented neither the employer's directive to claimant that she refrain from making public appearances on behalf of the employer, nor the employer's directive that claimant temporarily perform her work duties at the Newberg Office, were retaliatory in nature. Rather, these directives were reasonable attempts by CYFS to accommodate and remedy claimant's concerns while also protecting the employer's interests.

To the extent claimant voluntarily left her employment based on health concerns related to her migraines, claimant has also failed to demonstrate that her migraines were so grave that she had no alternative but to leave her employment. While claimant's migraines had been a long-term health issue, she had not seen a medical provider about her migraines in a year and a half and her migraines were unusual in that when they would occur they were not actually causing her pain. Under these circumstances, it is not reasonable to conclude that a prudent person of normal sensitivity, exercising ordinary common sense, would have felt that they had no other alternative but to leave work. This would particularly appear to be the case since claimant's complaints to the CYFS Board of Directors and the WWP were still active, and the results of investigations into her complaints still pending.

In sum, the preponderance of the evidence demonstrates that claimant voluntarily left work without good cause. The employer attempted to find reasonable ground to accommodate claimant's concerns, which they were taking seriously. In light of this fact, and the fact that claimant's complaints to both the CYFS Board of Directors and WWP remained pending at the time of her departure, claimant's circumstances were not so grave that she, or any similarly situated reasonable and prudent person, would

have had no reasonable alternative but to leave work. Likewise, claimant failed to meet her burden in demonstrating that her stress-induced migraines left her no reasonable alternative but to leave work. Under the circumstances demonstrated by the record, no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work while the investigations and remediation of her complaints and concerns was still pending. Claimant did not show that she had good cause to quit work, and she is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-142983 is affirmed.

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

DATE of Service: March 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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