

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0101

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits effective September 8, 2019 (decision # 95938). Claimant filed a timely request for hearing. On January 24, 2020, ALJ Frank conducted a hearing, and on January 28, 2020 issued Order No. 20-UI-143419, affirming the Department's decision. On February 5, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent it was based upon the record. Claimant included additional information in her written argument with respect to specific instances her supervisor's behaviors and treatment. She did not present that information during the hearing. In order to establish that EAB may consider the new information claimant must show that factors or circumstances beyond her reasonable control prevented them from offering the information during the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). The ALJ asked claimant several times to provide specific instances of her supervisor's behaviors and treatment, but claimant did not provide specific details. *See* Audio record at 15:30-17:30. In response, claimant responded with only general information and did not provide the details when requested beyond referring to her supervisor's failure to speak with claimant. Claimant has not shown that it was beyond her reasonable control to have done so. EAB therefore is unable to admit claimant's new evidence about her supervisor's other behaviors and treatment into the record, and reached this decision based only upon the evidence claimant submitted into the hearing record.

FINDINGS OF FACT: (1) Winston-Dillard School District # 116 employed claimant as a custodian from May 2019 to September 10, 2019.

(2) Claimant's supervisor did not speak directly to claimant. He instead spoke to claimant's coworker about claimant, asked where she was, what she was doing, and told him to tell her to do things. He spoke about claimant to other people and referred to claimant as "she" or "her" instead of communicating with her directly. Audio record at 17:00 to 17:30.

(3) Claimant disliked the supervisor's behavior. She believed the supervisor sexually harassed, otherwise harassed, and taunted her. She believed the supervisor harassed her through her male coworker by asking the male coworker what claimant was doing and giving him assignments to give to claimant. She believed he treated her and other female employees differently than their male coworkers. Claimant and her coworkers discussed that the supervisor had anger issues, and one coworker told claimant that the supervisor did not like women.

(4) On one occasion claimant told the supervisor that she was standing right there and wanted him to speak with her. The supervisor replied, "I'm saying this loud enough for both of you to hear." Audio record at 17:39-17:50. On four occasions, claimant talked to the administrative supervisor that managed claimant's supervisor. The administrative supervisor once told claimant that the supervisor was "a work in progress" and had a "mill mentality." Audio record at 23:35-23:53. Claimant did not observe any changes in her supervisor's behavior as a result of claimant's complaints to the administrative supervisor.

(5) Claimant knew there was an HR person at the district level and knew who the employer's superintendent was, but did not complain to them. She had been cautioned not to go to the school district with complaints, but to keep them inside the school. She also thought the employer had a cultural problem due to unidentified issues with her school's principal. Claimant knew that there was an HR person in the school other than the administrative supervisor but did not complain to that person.

(6) Claimant felt adverse health effects that she attributed to her working conditions. She experienced anxiety and received counseling for it. She had physical symptoms including insomnia, restlessness, and nausea. She felt that her family life was being affected, as well.

(7) On September 9, 2019, claimant gave notice of her intent to quit work effective September 10th, after working her September 9th shift. Claimant gave her resignation to the person she knew to be the school's HR person and also addressed the resignation to the employer's superintendent. No one contacted claimant after receiving her resignation to discuss her complaints or offer resolutions. Claimant finished her September 9th shift, and did not return to work thereafter.

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). Claimant had anxiety, which can be considered a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant left work because she felt her supervisor's behaviors toward her affected her mental health, physical health, and family life. Although there is nothing in the record to suggest that claimant was not genuinely disturbed by the supervisor's behavior, the evidence in this record fails to show that claimant's situation was one of such gravity that she had no reasonable alternative but to quit work. The evidence in the hearing record is that the supervisor did not speak to her directly and gave her instructions through a coworker. Claimant did not specify what other, if any, specific, objectionable ways the supervisor treated her on this record. Although it might have been frustrating or even unpleasant for claimant that her supervisor delivered information and instructions to her through her coworker, that was not so grave that any reasonable and prudent person in her situation would have felt they had no reasonable alternative but to quit work.

Although claimant had tried to complain to her on site administrative supervisor on four occasions and felt nothing changed as a result, claimant never complained to anyone she understood to be in an HR capacity prior to quitting work, and did not complain to the superintendent or at the district level when her attempts to complain only to the school level had failed. Although claimant understood there was a strong preference to keep complaints at the school instead of going to the district, she did not identify any negative consequences that she thought would result if she complained at the district level, anyway. Given that claimant reached the point when she had decided to quit her job rather than continue working under her supervisor, the record does not show that she would have been any worse off for having complained to the district. She might even have improved her circumstances by calling attention to the supervisor's behaviors to individuals who might have had the ability to intervene and correct the issues that caused claimant to quit her job. On this record, we cannot say that any reasonable and prudent person with the characteristics and qualities of an individual with anxiety would have considered complaining at the district level unreasonable as an alternative to quitting. Nor can we find that no such reasonable and prudent person would have continued working under the circumstances as they existed at the time claimant quit her job.

Claimant therefore left work without good cause. She is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 20-UI-143419 is affirmed.

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

DATE of Service: March 11, 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 الاستئناف 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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