

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0103

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 13, 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 November 10, 2019 (decision # 72242). Claimant filed a timely request for hearing. On January 15, 2020, ALJ Shoemake conducted a hearing, and on January 17, 2020 issued Order No. 20-UI-142896, affirming decision # 72242. On February 6, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Amazon.com Services, Inc. employed claimant as a warehouse worker beginning September 29, 2019. Claimant last worked for the employer on November 6, 2019.

(2) Claimant and her husband had a toxic relationship in which they regularly argued, but he was not physically abusive. Her husband had anxiety and depression, and his behavior was not stable.

(3) On November 10, 2019, claimant and her spouse argued again. The argument escalated, and claimant's husband took her phone away, yelled, and pushed and hit claimant. Claimant's husband had never hit her before, and his facial expression and words during the November 10th incident were different than usual and scared claimant. Claimant felt afraid and felt she was no longer safe at home.

(4) After the argument and abuse occurred on November 10, 2019, claimant called police to ask that they check on her husband's health. She chose not to report that he had hit her and she was not injured badly enough to require medical attention.

(5) After leaving the home on November 10th, claimant tried to find a hotel but could not find one with vacancies that she could afford. She drove her car to a residential area that looked like she could park safely and lived in her car for about a day while she considered her options. Staying in Oregon was her preference, but it was not safe for her to stay at her apartment with her husband, she was still on the

lease with her husband for the apartment, she did not have money to rent another apartment, and she did not have friends or family with whom she could stay in Oregon and continue working. Because claimant was not safe at home, and did not have anywhere to live in Oregon, she decided to stay with relatives in Arkansas and Louisiana.

(6) Claimant's mother-in-law gave claimant \$120, and with that she had enough money to drive to her mother's home in Arkansas. On November 11, 2019, claimant began driving to Arkansas. Between November 11, 2019 and November 13, 2019, claimant was absent from work and used her accrued leave and unpaid leave to cover her absences.

(7) On approximately November 14, 2019, claimant arrived in Arkansas. She stayed there for approximately a week.

(8) On November 18, 2019, claimant called the employer's employee assistance program to ask what her options were as far as her employment, including whether the employer could transfer her to Arkansas or Louisiana, whether a leave of absence was available, and how she could make sure she left on good terms and would be eligible for rehire. The employer did not have any transfer opportunities for claimant in Louisiana or Arkansas. The employer had a six-week leave of absence available, but claimant did not think that she would be ready to return to work for the employer in six weeks, particularly because she was already in Louisiana, did not have the money or resources to live elsewhere at that time, and had a potential job opportunity there. The employer told claimant that she could voluntarily resign her employment to remain in good standing and eligible for rehire.

(9) Effective November 19, 2019, claimant quit her job. Within a few days, claimant moved to her aunt's home in Louisiana to live with her rent-free. Her aunt helped her get a new job with her employer.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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). ORS 657.176(12) and OAR 471-030-0150 (January 11, 2018) provide, in pertinent part, that an individual may not be disqualified under ORS 657.176(2)(c) if they are a victim of domestic violence, including "the physical injury . . . or threat thereof," and leaves work to protect themselves from domestic violence they reasonably believe will occur as a result of their continued employment.

The order under review concluded that claimant voluntarily left work without good cause because although claimant "feared for her safety" after an "altercation" with her husband, which the order described as involving only pushing and yelling, she did not report her husband to the police, file for a protective order, or "show that continuing to work for the employer was likely to result in further domestic violence." Order No. 20-UI-142896 at 1-3. The record does not support the order's conclusion.

As a preliminary matter, the applicable laws and rules do not require that claimant report her husband's abuse to police or file for a protective order as a condition of showing good cause to quit work, nor are such findings even pertinent to the good cause analysis. The law requires only that claimant show that 1)

she left work because she was a victim of domestic violence and 2) she needed to leave work to protect herself from further violence.

Claimant was the victim of domestic violence because her husband pushed and hit her. Claimant also had to leave work to protect herself from further violence because the only place she could live in proximity to her work location – other than her car – was the apartment she had shared with her husband, and it was not safe for her to return there. Claimant was afraid to return to the apartment because her husband’s behavior had escalated and his mental health appeared unstable, to the extent that he had hit her for the first time in their marriage and she was scared to be around him. She did not have the resources to continue living in the vicinity of her job with the employer. In order to move to a location from which claimant was safe from her husband, and protect herself from further abuse, claimant was required to leave her job and move to a different state.

Because claimant quit work to protect herself from domestic violence she reasonably believed would occur if she did not, claimant cannot be disqualified from receiving unemployment insurance benefits because of this work separation.¹

DECISION: Order No. 20-UI-142896 is set aside, as outlined above.

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

DATE of Service: March 11, 2020

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ The outcome of this decision would have remained the same regardless if we had decided it under OAR 471-030-0038’s good cause or compelling family reasons provisions. No reasonable and prudent person would consider living in their car or with an abusive spouse or partner to continue working as a reasonable alternative to quitting the job to live safely in another state. OAR 471-030-0038(4). Quitting work to avoid further abuse associated with domestic violence would also be considered good cause to quit under the compelling family reasons rules. OAR 471-030-0038(1) and (5).



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.