

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0175

Affirmed
Disqualification Effective Week 49-19

PROCEDURAL HISTORY: On December 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 72811). Claimant filed a timely request for hearing. On January 29, 2020, ALJ Amesbury conducted a hearing, and on February 5, 2020, issued Order No. 20-UI-143927, affirming the Department's decision. On February 24, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Courtyard Fountains employed claimant, last as an executive chef, from November 14, 2012 until December 3, 2019.

(2) The employer provided food services to residents of a residential facility. In 2012 claimant began her employment as a cook. Because claimant was good at her job, the employer promoted her to executive chef in October of 2017. The promotion to executive chef included a substantial pay increase, better benefits and increased prestige.

(3) Claimant's duties as executive chef included all of the duties she had previously performed as a cook in addition to responsibilities for hiring, firing, supervising, and scheduling workers and overseeing and ordering supplies.

(4) In 2019, the employer became dissatisfied with claimant's performance in managing employees and enforcing the work schedule, which led to poor performance by employees, sanitation and maintenance

issues and labor shortages that disrupted the employer's business. The employer decided to demote claimant back to cook.

(5) On November 29, 2019, the employer presented claimant with the choice of stepping down from her position of executive chef to cook or being terminated. The parties did not discuss a change in compensation and benefits if claimant accepted the demotion, but both the employer and claimant understood that there would be a reduction in both.

(6) Initially, claimant decided to accept the demotion and continue to work as a cook. However, after giving the matter some additional thought, claimant decided to resign because she considered the demotion too degrading and humiliating for her.

(7) On December 3, 2019, claimant submitted a written resignation to the employer, effective December 6, 2019. In her resignation letter, claimant stated that the demotion made her feel "degraded, humiliated and...embarrassed" and that she believed the employer had treated her "unprofessionally" for several months. Exhibit 1 (Claimant letter). Later that day, the employer notified her by letter that it was releasing her immediately with pay through December 6, 2019 and expected the return of all company property in her possession. Exhibit 1 (Employer letter). The employer did not provide a reason for accelerating claimant's work separation to December 3, 2019.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct, within fifteen 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 December 3, 2019, claimant notified the employer that she was quitting work, effective December 6, 2019. However, the employer did not allow claimant to work through her notice period without providing a reason. Because claimant was willing to continue working for the employer until December 6, but was not allowed to do so by the employer, the work separation was a discharge that occurred on December 3, 2019.

The employer discharged claimant when it did without stating a reason. The record fails to show that it discharged claimant because she had engaged in conduct it considered a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her. Accordingly, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a). *See* OAR 471-030-0038(3)(a).¹

ORS 657.176(8) states, "For purposes of applying subsection (2) of this section, 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 would be for reasons that do not constitute good cause; (b) The employer

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).

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 employer that she would end her employment on December 6, 2019. The employer discharged her, not for misconduct, on December 3, 2019, less than 15 days prior to her planned quit date. Therefore, it is necessary to determine whether claimant’s planned quit would have been 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 decided to resign effective December 6, 2019 because the employer’s demotion made her feel “degraded, humiliated and...embarrassed” and that she believed the employer had treated her “unprofessionally” for several months. However, the employer explained at hearing that although it had issues with claimant’s performance as a manager of employees after she became the executive chef, claimant had been an exceptional cook and caterer prior to her promotion and for that reason the employer wanted to retain her to perform those duties. Transcript at 20-22 and 26-27. At hearing, claimant failed to rebut the employer’s witness’s explanations for its demotion decision and also failed to show how the employer had treated her “unprofessionally” during the several months prior to its demotion decision. Accordingly, although claimant’s demotion may have been somewhat embarrassing for her, the record fails to show that being demoted from executive chef to cook on November 29, 2019 created so grave a situation for claimant that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time. Consequently, claimant’s planned quit was without good cause.

ORS 657.176(8) states that in cases like these, the individual is only 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.” In this case, where the week in which the actual discharge occurred and the week of the planned voluntary leaving without good cause were both the same week, claimant is not considered eligible for any benefits under ORS 657.176(8). Accordingly, claimant’s disqualification from benefits based upon claimant’s planned voluntary leaving is effective week 49-19 (December 1, 2019 through December 7, 2019).

In sum, claimant is disqualified from receiving unemployment insurance benefits effective December 1 2019 and until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 20-UI-143927 is affirmed.

D. P. Hettle and S. Alba;

J. S. Cromwell, not participating.

DATE of Service: March 27, 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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