

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0237

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work with good cause (decision # 81545). The employer filed a timely request for hearing. On March 11, 2020, ALJ S. Roberts conducted a hearing, and on March 12, 2020, issued Order No. 20-UI-146106, concluding claimant quit work without good cause and was disqualified from receiving benefits, effective December 15, 2019. On March 17, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a written argument. However, 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) Lane Transit District employed claimant as a business process assistant from November 13, 2018 to December 16, 2019.

(2) In October of 2019, claimant was assigned a new supervisor. After a short period of time, claimant concluded the new supervisor disliked her and showed favoritism to other employees because although claimant had requested extra work hours, the supervisor gave other employees extra hours instead of claimant.

(3) On December 5, 2019, claimant sent her supervisor a text message outlining her concerns about not being given extra hours to work when other coworkers were being given extra hours. The supervisor asked claimant to meet with her the next morning.

(4) On December 6, 2019, claimant met with her supervisor. During the meeting, the supervisor was “stern and direct” with claimant as she expressed her dissatisfaction with claimant’s text message which suggested she had been unfair in awarding hours and stated that the employer had been “very flexible in providing a work/life balance for [claimant] to work part-time and still tend to her child and her family.” Transcript at 47-48. Claimant did not disagree but became upset with the supervisor’s demeanor and cried at times during the meeting. She also believed the supervisor had lied to her about the number of times she had called out from work during past months and suggested to the supervisor that a human resources representative should be included in their conversation.

(5) On December 9, 2019, claimant met with an employer human resources representative. Claimant told the representative that she had met with her supervisor on December 6 and wanted to make a report about the meeting. The representative told claimant that her supervisor had already spoken to him and that he wanted them to meet together. Claimant believed the representative “cut [her] off” and did not allowed her to express her concerns about the supervisor’s behavior. Transcript at 12.

(6) On December 12, 2019, claimant met with the human resources representative, her supervisor and the finance director. The finance director, who had been claimant’s prior supervisor, discussed the essential functions of claimant’s part-time job, which were different from the functions and type of work hours being offered by the new supervisor to others. Claimant then addressed some of her concerns and stated that her supervisor told “lies” about her. Transcript at 18. The human resources representative interrupted claimant, changed his tone of voice and criticized claimant for the accusation, calling it “an assassination of her [supervisor’s] character.” Transcript at 19. The representative also told claimant that there had been reports from coworkers that claimant had been “talking poorly” about the supervisor. Transcript at 19. Claimant did not believe she had ever done so, considered the reports to be untrue, and when claimant asked who had reported that and when, the representative refused to provide the information. At the end of the meeting, the representative encouraged claimant and the supervisor to act professionally with each other going forward and the supervisor agreed to do so. The representative warned claimant not to discuss the meeting with others. Claimant believed the representative had been aggressive toward her during the meeting and had not addressed her concerns. Claimant left the meeting upset, and requested the rest of the day off.

(7) Over the weekend following the December 12 meeting, claimant decided she would report for work on Monday, December 16, 2019, intending “to put everything around me, like behind me and just hope for the best.” Transcript at 23. However, shortly after reporting for work on December 16, claimant decided that she could no longer work for the employer and “had no choice” but to resign. Transcript at 24. Claimant resigned because she believed her supervisor, the human resources representative and possibly other employees had lied about her, could not be trusted, might make “more false reports” about her, and possibly get her “arrested” for a false report concerning her cash handling duties. Transcript at 22, 38-40.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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 was understandably uncomfortable with what she perceived as aggressive behavior from both her supervisor and the human resources representative during the December 6 and December 12 meetings with claimant. The supervisor admitted that she was “stern and direct” with claimant on December 6, and the human resources representative agreed that his “voice may have fluctuated a little” during the December 12 meeting. Transcript at 58. However, viewed objectively, claimant’s conclusion at the time that she quit on December 16 that those individuals and perhaps others might lie and make “more false reports” about her to get her fired or possibly “arrested” based on a false report concerning her cash handling duties was based on speculation rather than facts. There is nothing in this record suggesting that claimant was likely to be the victim of such extreme behavior in the future, particularly when the human resources representative closed the December 12 meeting by encouraging everyone there to act professionally with each other moving forward and claimant’s supervisor agreed to do so. Considering the totality of the circumstances, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant’s circumstances, would not have concluded that her situation was so grave that she “had no choice” but to resign when claimant did on December 16, 2019.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she requalifies by earning at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 20-UI-146106 is affirmed.

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

DATE of Service: April 17, 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 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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