

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0246

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 31, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntary quit work without good cause, and was disqualified from receiving benefits effective November 24, 2019 (decision # 123648). Claimant filed a timely request for hearing. On February 20, 2020, ALJ Frank conducted a hearing, and on February 28, 2020, issued Order No. 20-UI-145331, affirming the Department's decision. On March 19, 2020, Order No. 20-UI-145331 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On March 20, 2020, claimant filed a late application for review with EAB.

Claimant did not declare that she provided a copy of her written argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (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) Walmart Associates, Inc., employed claimant from December 2011 until November 29, 2019, in its Lebanon, Oregon store. In or around October 2018, claimant made a lateral move within the company to become an assistant store manager. At all relevant times, claimant suffered from anxiety and stress and was receiving medical treatment, including medication, to address her symptoms. In addition, at all relevant times the employer offered an "ethics" email address for employees to raise concerns about supervisors.

(2) In January 2019, a new store manager (SM) began working in the employer's Lebanon store. The SM had previously served eight years in the military and he viewed his leadership approach as being upfront and honest with the employees he supervised; he was not one to "sugarcoat" things. Audio Record at 31:20. The SM implemented a 1:00 p.m. daily planning meeting where he would set his expectations for the day. The SM supervised claimant in her role as an assistant store manager.

(3) On May 10, 2019, claimant emailed "ethics" to address her concerns about "bullying" tactics used at the store by the SM. Exhibit 2, May 10, 2019 email. Claimant asserted in the email that the SM "is

developing a culture of fear and control” and used “a systematic way of talking to you and beating you down”. Exhibit 2, May 10, 2019 email. Claimant also asserted that “[a]t this point I feel sick of the thought of going to work each day,” and that “[i]n sending out this complaint, I feel it’s the beginning of the end of my Wal-Mart career...” Exhibit 2, May 10, 2019 email. Claimant provided one example of a specific time when the SM “intimidated and humiliated” a co-worker, and noted that three assistant store managers had left the job since the SM had begun working at the Lebanon store. Exhibit 2, May 10, 2019 email. Claimant ended the email by stating that she believed that in emailing “ethics” with her complaint she would be retaliated against, but that the SM’s actions were inconsistent with the employer’s “values or core beliefs” and “it needs to be done.” Exhibit 2, May 10, 2019 email.

(4) In mid-May 2019, the employer assigned a case manager to investigate claimant’s allegations from her ethics email. The employer’s investigator immediately established contact with claimant as part of her investigation. Also during this period, claimant received her first disciplinary action in 7½ years with the store.

(5) From mid-July 2019 to August 17, 2019, claimant took a 5-week leave of absence from the employer due to her anxiety and stress. On August 15, 2019, claimant emailed her medical provider to advise her of the “stress” she was feeling at the thought of returning to work and that she had “begun having nightmares again where my boss attacks me.” Exhibit 2, August 15, 2019 email from claimant to K.P. (MD). Claimant’s medical provider responded, “Keep working at getting out of there.” Exhibit 2, August 15, 2019 email from claimant to K.P. (MD).

(6) From mid-May 2019 through September 11, 2019, claimant sent the investigator multiple additional emails not only raising additional concerns with the SM’s management style and behavior, but also asking for status updates on the investigation. On September 11, 2019, claimant emailed the investigator and stated, “I know you’ve said you’re still working through my concerns, but it’s been 4 months and I’m so drained that I cannot continue to wait for things to work themselves out, nor do I think they will work out.” Exhibit 2, September 11, 2019 email. Claimant’s September 11, 2019 email listed the names of eight form assistant managers who “could no longer wait for things to work themselves out since [the SM] came in January.” Exhibit 2, September 11, 2019 email

(7) In an attempt to alleviate her circumstances claimant attempted to step down from her assistant manager position to an hourly position at a different store. Claimant had received regional approval for this type of employment transfer, and she tried several stores, but received no response from any of the stores. The SM believed her inability to transfer was due to her having a “presence” in the markets for being “disruptive” because “she could call ethics”. Audio Record at 34:55. Claimant believed that any reputation she had for being “disruptive” was due to the efforts of the SM. Audio Record at 38:53.

(8) On November 29, 2019, claimant reported for work with no intention of quitting that day. The store was receiving two delivery trucks and the SM wanted both unloaded by 6:00 p.m. Claimant went to talk over the paperwork with the SM because she was concerned about the unloading team’s ability to meet the 6:00 p.m. deadline. The SM replied to claimant in a “threatening” tone that “you will get it done, these are the expectations, I am tired of you not doing these things.” Audio Record at 21:10 to 22:21. The SM’s tone made claimant feel like “garbage.” Audio Record at 21:18. Claimant left the SM’s office, went to the backroom and began crying uncontrollably. Claimant quit work that day determining that

“[she] can’t do this anymore.” Audio Record at 22:49. Claimant texted the SM that she had turned in her vest and keys to another employee.

(9) The employer never informed claimant of how her “ethics” complaints were resolved. The SM believed that none of the claimant’s complaints were “found to be true.” Audio Record at 35:00. At the time she left her employment, claimant had seven weeks of paid leave time remaining.

(10) Between February 28, 2020 and March 19, 2020, three of claimant’s family members were required to self-quarantine due to their direct exposure to an individual infected with COVID-19. Due to her preoccupation with assisting these family members, claimant could not file her application for review with EAB until March 20, 2020.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 20-UI-145331 is allowed. We disagree with Order No. 20-UI-145331 and conclude that claimant voluntarily left work with good cause.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The impact of the COVID-19 crisis on claimant and her family prevented claimant from filing a timely application for review. In light of the direct impact of the COVID-19 crisis on claimant and her family, claimant’s ability to timely file her application for review was beyond her reasonable control and she has established good cause to extend the 20-day filing window.

Claimant became able to file her application for review on March 20th, one day after the filing deadline expired, which was within the 7-day “reasonable time” period. Having met both the good cause and reasonable time requirements, claimant’s late application for review is, therefore, allowed.

Voluntary leaving. 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, 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.

Order No. 20-UI-145331 found that the circumstances surrounding claimant's employment, when considered from the perspective of a reasonable and prudent person with anxiety, "constituted a grave situation." Order No. 20-UI-145331 at 3. Nevertheless, Order No. 20-UI-145331 concluded that claimant left work without good cause because she did not "pursue all reasonable alternatives to quitting her job", including "go[ing] home instead of quitting," "ma[king] sustained efforts to secure a transfer to another store," and "tak[ing] a leave of absence pending" the approval of one or both of these options. Order No. 20-UI-145331 at 3.

While the record supports Order No. 20-UI-145331's conclusion that the circumstances surrounding claimant's employment, and her interactions with the SM, were grave, the record does not support Order No. 20-UI-145331's conclusion that claimant left work without good cause. The preponderance of the evidence establishes that the employer subjected claimant to a sustained and toxic working environment, where her supervisor systematically intimidated and humiliated claimant and other subordinates. The record establishes that claimant made extensive efforts in attempting to address her concerns through HR channels. Claimant sent multiple complaining emails to the employer's "ethics" email address, resulting in the initiation of an investigation in May 2019, which the preponderance of the evidence suggests had not concluded as of the claimant's November 29, 2019 decision to leave work. Claimant also took a 5-week leave of absence necessitated by her work-related stress, sought anxiety and stress-related guidance from her medical provider, and unsuccessfully attempted to seek a transfer to an hourly position at another store.

Given the totality of these circumstances, the preponderance of the evidence does not support the conclusion that additional efforts at seeking a transfer, taking a second leave of absence, or simply going home for the day instead of quitting would have led to any meaningful change in the circumstances surrounding claimant's work environment. Rather, the record supports the conclusion that no reasonable and prudent person with anxiety would have continued to work for the employer for an additional period of time in the aftermath of the November 29, 2019, meeting between claimant and the SM. Claimant is, therefore, not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 20-UI-145331 is set aside, as outlined above.¹

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

DATE of Service: April 22, 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.

¹ This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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.



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 desisyong ito.

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.

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.