

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0280

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged not for misconduct within fifteen days of claimant's planned quit without good cause, and was disqualified from receiving unemployment insurance benefits effective January 26, 2020 (decision # 80410). Claimant filed a timely request for hearing. On March 25, 2020, ALJ Janzen conducted a hearing, and on March 26, 2020 issued Order No. 20-UI-146957, affirming the Department's decision. On March 31, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Volt Management Corp. (Volt), a temporary staffing agency, employed claimant at an assignment at Qorvo from February 4, 2019 to January 24, 2020. At Qorvo, claimant worked as an intern in its human resources department assisting a program manager with hiring all of Qorvo's interns. Claimant hoped his internship would lead to an offer of employment with Qorvo.

(2) In general, Qorvo did not permit employees in its human resources department to telecommute for work. However, on June 7, 2019, claimant requested that he be permitted to telecommute for work while he received diagnosis and treatment for a serious health condition. Volt and Qorvo approved his request, and claimant telecommuted for work, or did a combination of telecommuting and working at the office, from June 7 through August 15, 2019. Volt instructed claimant's manager at Qorvo to refrain from telling claimant's coworkers at Qorvo why they permitted him to telecommute during the summer of 2019. On August 15, 2019, claimant's doctor released him to return to work with no restrictions and claimant began working all of his work hours at Qorvo's office.

(3) When claimant returned to working onsite at Qorvo, he felt that he returned to a “weird environment” because his coworkers there did not know why he had been permitted to telecommute during the summer of 2019. Transcript at 15-16. Claimant’s coworkers treated him differently after he returned, in what claimant felt was a “cold” and “rude” manner. Transcript at 16. Before he began his period of telecommuting, Qorvo had included claimant in Qorvo-sponsored charity activities and events, local and out-of-state recruiting events at universities, meetings with Qorvo’s high-level management, weekly Qorvo employee lunches, and Qorvo social events. After August 15, claimant was not given any of those opportunities, including not being invited to the “weekly lunch” that nine other interns were invited to attend, recruiting events, a retirement party, and holiday celebrations. Transcript at 16.

(4) In October 2019, claimant complained to his supervisor at Volt that he was being “excluded from [Qorvo’s] activity.” Transcript at 9. In November 2019, the Volt manager discussed claimant’s concerns with claimant’s manager at Qorvo.

(5) During November and December 2019, claimant’s relationship with his manager at Qorvo “deteriorated” because the manager asked claimant to engage in a hiring practice that violated recommendations from its legal department. Claimant persuaded the manager to complete the hiring in a different, legal manner. Claimant did not complain about the Qorvo manager’s practices to the employer.

(6) In December 2019, claimant discussed his concerns about being excluded from Qorvo events with his manager at Qorvo. The manager told claimant, “[Your coworkers] are mad because of what happened over the summer. They saw you could work from home. . . . I couldn’t tell them anything because of these medical rules and because . . . you work for Volt.” Transcript at 17. She continued, “I can’t do anything about this. Like they have their own opinion. It’s just how it’s going to be.” Transcript at 17. Claimant’s manager at Qorvo told claimant that “her hands were tied” about how his coworkers treated him. Transcript at 31. Claimant experienced anxiety about his how his coworkers treated him and how Qorvo failed to respond to his complaint.

(7) Claimant did not discuss his concerns with his coworkers at Qorvo, other than his manager, because it was “so awkward” to discuss his medical condition with coworkers, and he suffered from “social anxieties.” Transcript at 18. Claimant felt he needed support from Volt or Qorvo to explain why Qorvo permitted him to telecommute.

(8) Neither Volt nor Qorvo ever reprimanded or warned claimant. Claimant received “great reviews” from Qorvo. Transcript at 21.

(9) On January 20, 2020, claimant gave notice that he planned to quit work on January 31, 2020. Claimant quit work because his coworkers at Qorvo excluded him from work activities and events, and because his manager at Qorvo asked claimant to engage in a hiring practice claimant believed was illegal.

(10) On January 24, 2020, Qorvo ended the work assignment because it had no work assignments available to assign claimant that would not have extended beyond January 31, 2020.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. “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.” However, ORS 657.176(8) provides that when an individual has notified an employer that they will quit work on a specific date, and the employer discharges the individual, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that the individual is 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 quit date.

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.

The order under review concluded that claimant quit work without good cause, and that the employer, Volt, discharged claimant not for misconduct within fifteen days prior to claimant's planned quit.¹ Because the order concluded that the employer discharged claimant not for misconduct within fifteen days of claimant's planned quit not for good cause, the order applied ORS 657.176(8).²

On January 20, 2020, claimant told the employer he was quitting work effective January 31, 2020. By ending claimant's work assignment on January 24, 2020 because Qorvo did not have additional work to assign claimant, claimant's employment ended on that day, which was less than 15 days prior to his planned quit date. The record does not show that claimant's discharge was due to any willful or wantonly negligent violation of a reasonable employer expectation. The employer therefore discharged claimant, not for misconduct, on January 24, 2020. The remaining issue to be determined is whether ORS 657.176(8) applies to this case; it must be determined whether claimant's planned quit on January 31, 2020 would have been without good cause.

The order under review concluded that claimant's planned quit on January 31, 2020 was without good cause because claimant's working conditions did not constitute a grave situation for claimant.³ The order

¹ Order No. 20-UI-146957 at 3-4.

² Order No. 20-UI-146957 at 3-4.

³ Order No. 20-UI-146957 at 3.

reasoned that to the extent claimant planned to leave work out of concern about the program manager's illegal hiring practice, claimant left work without good cause because he had successfully convinced the program manager to complete the work in a legal manner, and had the reasonable alternative of complaining to Volt or another manager at Qorvo before quitting.⁴ For these reasons, the record supports the conclusion that claimant did not have good cause to quit due to his disagreement with his manager's hiring practice.

However, the order under review also reasoned that to the extent claimant planned to quit work because of his "coworkers' exclusion of him," the record contained only "relatively insignificant" examples of such conduct, such as the coworkers' failure to include claimant in a group photograph or decorate his cubicle for Halloween.⁵ The order reasoned that whether the coworkers' chose to include claimant on those occasions was at Qorvo's "discretion," and did not amount to a situation of such gravity that claimant had good cause to quit.⁶ However, the record shows that the coworkers' conduct was not "insignificant," and that claimant faced a grave situation at work because he experienced retaliation in the workplace for having been given the reasonable accommodation to telecommute for work while he received treatment for his health condition during the summer of 2019. Moreover, claimant had no reasonable alternative but to quit due to the retaliation because he complained to Volt and Qorvo, and neither took appropriate action to remedy the problem.

Claimant gave notice that he planned to quit work on January 31, 2020. Claimant planned to quit because he was given fewer networking opportunities at his work assignment after he returned to working full-time onsite at Qorvo, and neither Volt nor Qorvo helped remedy the problem when claimant complained. Volt's program manager testified that claimant spoke to her about being excluded from activities at his work assignment at Qorvo because he had been working from home for two months. Transcript at 9. The Volt manager asserted that, "while [Volt employees] should be cordial and have a working relationship with the people they are working with[,] they are Volt employees, and so they're not necessarily invited to the customer's corporate functions, or some other special activities." Transcript at 9.

However, the record shows that claimant experienced more than "relatively insignificant" differential treatment for "discretionary" activities when he returned to the office in August 2019. As an intern, claimant hoped to receive an offer of permanent work from Qorvo. The uncontested evidence shows that before he was permitted to telecommute, he was included in Qorvo activities, as were other interns, such as charity events, local and out-of-state recruiting events, meetings with high-level management, weekly lunches, and other social events. Such opportunities were not "insignificant" for an intern whose goal was to establish connections with other Qorvo employees and managers to secure future employment with Qorvo. After his telecommuting period, claimant was not invited to recruiting events, meetings with high-level management, weekly lunches, and other social events.

⁴ Order No. 20-UI-146957 at 3.

⁵ Order No. 20-UI-146957 at 3.

⁶ Order No. 20-UI-146957 at 3.

Claimant believed his coworkers treated him differently because he was permitted to telecommute for two months due to his medical condition. His manager at Qorvo confirmed his belief. When claimant complained to his manager at Qorvo in December 2019, she told him that his coworkers were “mad because of what happened over the summer,” when claimant had telecommuted. However, although claimant complained to both his Volt and Qorvo managers about how his coworkers treated him, and despite admitting that the differential treatment was due to claimant having requested an accommodation based on his medical condition, neither Volt nor Qorvo adequately addressed claimant’s complaint, and claimant’s coworkers continued to treat him differently. By January 2020, claimant had already complained to his managers and his working conditions had not improved. Discussing his concerns with his coworkers was not a reasonable alternative under the circumstances, considering claimant’s right to keep his medical condition private. Claimant therefore did not have any reasonable alternative to quitting work remaining at the time he gave notice that he would quit, and no reasonable and prudent person would have continued to work the assignment with Qorvo for an additional period of time.

In sum, after claimant notified the employer of his intention to quit work, with good cause, he was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Thus, ORS 657.176(8) does not apply to this case. Accordingly, the employer discharged claimant, but not for misconduct under ORS 657.176(2)(a) and claimant is not disqualified from receiving unemployment insurance benefits on the basis of his work separation from the employer.

DECISION: Order No. 20-UI-146957 is set aside, as outlined above.

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

DATE of Service: April 30, 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.

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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 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
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