

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0375

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 26, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work with good cause (decision # 73706). The employer filed a timely request for hearing. On April 23, 2020, ALJ Schmidt conducted a hearing, and on April 28, 2020 issued Order No. 20-UI-148864, concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 23, 2020. On May 9, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted documents to EAB with her application for review that were already contained in the record as Exhibits 1 and 2. EAB considered the entire hearing record, including Exhibits 1 and 2, in reaching this decision.

FINDINGS OF FACT: (1) Wenoregon LLC employed claimant in its Wendy's restaurant from January 11, 2019 until February 26, 2020. Transcript at 4. Before January 5, 2020, claimant worked as an assistant manager. On January 5, 2020, claimant was relieved of all her managerial duties when a general manager was assigned to claimant's store.

(2) Since January 2020, the employer did not permit claimant to use her telephone except during her rest and meal breaks. Claimant customarily called or sent a text message to her boyfriend during her breaks. The general manager met with claimant in early January 2020 to discuss claimant's relationship with her boyfriend, and claimant asked that the general manager to keep claimant's "personal stuff" confidential. Transcript at 18. The general manager "worried for [claimant's] safety," due to claimant's relationship with her boyfriend. Transcript at 15.

(3) On January 19, 2020, the general manager changed claimant's regular work schedule. Claimant was not aware that her schedule had changed. When claimant did not report to work on time, the general manager called the police to check on claimant. Two employees went to claimant's home and told her she was scheduled to work. The general manager shared some of claimant's information about her boyfriend with other employees.

(4) On separate occasions, the general manager became frustrated while working and punched a drive-through machine and a soda machine. The general manager sometimes would “toss” things out of frustration. Transcript at 12-13. When claimant asked for time off work due to illness, the general manager appeared frustrated to claimant, and responded, “Fine, do whatever,” and would “ignore you like you didn’t exist.” Transcript at 14.

(5) The employer had a “Speak Out” program to provide employees a means of complaining about another employee. Claimant spoke to someone at the program about filing a complaint against the general manager, but did not do so because she was not confident it would be kept confidential. On one occasion, when another employee used the employer’s “Speak Out” program, the general manager told claimant that the general manager “got another complaint, and I’ll just make her my bitch . . . [u]ntil she quits.” Transcript at 25. That complainant quit.

(6) Claimant also complained to the district manager about the general manager’s conduct at work. The district manager told claimant that, “[claimant] was making something out of . . . it, it wasn’t happening,” and yelled at claimant for speaking to someone “outside the chain of command” when she spoke to the “Speak Out” program. Transcript at 22.

(7) Claimant also complained to her area manager about the general manager’s conduct. The area manager met with claimant, the general manager, and the district manager. The general manager’s conduct toward claimant did not improve after the meeting.

(8) Early in her shift on February 26, 2020, claimant saw the general manager turning grilled chicken. Claimant noticed the general manager was not wearing gloves and remarked, “[D]on’t forget gloves.” Transcript at 6. The general manager responded, “You wanna do it yourself[?]” Transcript at 6. Claimant felt the interaction “set the tone” between claimant and the general manager for the day. Transcript at 6.

(9) On February 26, 2020, the employer did not provide claimant with a break during the first four hours that claimant worked. As a result, claimant did not have the opportunity to communicate with her boyfriend at the usual time. Claimant’s boyfriend sent claimant multiple text messages. Claimant needed to take a break to use the bathroom and, due to a “strained” relationship with her boyfriend, “found it urgent” that she call her boyfriend back. Transcript at 7. Claimant told the general manager repeatedly that she needed to take a break. The general manager refused to allow claimant to take a break. There were “plenty” of other employees working at the time, and the other employees had taken one, even two, breaks already. Transcript at 7. The general manager had taken two breaks. Claimant answered her boyfriend’s messages. The general manager told claimant she could give claimant a warning for insubordination. Claimant began to cry, and was unable to stop crying. Claimant was upset, in part, because it would have been her third warning since January 2020, and six warnings within six months could result in discharge.

(10) On February 26, 2020, claimant quit work because of how the general manager treated her at work, including when the general manager told claimant on February 26 that she could give claimant a warning for insubordination when claimant took a break after the general manager would not give her permission to take a break.

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). “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 did not have good cause to leave work when she did because the general manager’s treatment of her did not constitute a grave situation.¹ The order also concluded that even if claimant’s circumstances were grave, she had the reasonable alternative of asking the employer for permission to make telephone calls when necessary to avoid creating unsafe situations with her boyfriend.² However, the record does not support a conclusion that claimant quit work without good cause.

First, the record shows that the general manager’s behavior toward claimant created a grave situation for claimant. Beginning when the general manager started work in January 2020, claimant witnessed intimidating behavior from the general manager, including punching and tossing items at work, and a statement about making an employee “her bitch” when the employee complained about her. The general manager violated claimant’s privacy by apparently disclosing details of claimant’s relationship with her boyfriend to other employees, and used highly questionable judgment to call the police when claimant did not report for work on time. The pattern of behavior from the general manager also included pressuring claimant not to take time off work, and ultimately, denying claimant her right to a break³ on February 26, 2020 despite knowing claimant’s need to respond to her boyfriend and claimant’s situation with him. Under such circumstances, any reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would view claimant’s work situation as grave.

Second, the record does not show that claimant had a reasonable alternative to quitting when she did. The record shows that claimant repeatedly complained to the district manager and the area manager. The district manager yelled at claimant and minimized claimant’s concerns. The record does not show that the area manager took action to correct the general manager’s behavior. Nor was it a reasonable alternative for claimant to use the “Speak Out” program considering what the general manager stated about another employee who complained through that program. The preponderance of the evidence shows the general manager’s hostile conduct toward claimant continued despite claimant’s complaints, and additional complaints from claimant would have continued to be futile.

¹ Order No. 20-UI-148864 at 3.

² Order No. 20-UI-148864 at 3.

³ The record does not show the employer was exempt from the requirement to provide claimant, for each segment of four hours or major part thereof worked in a work period, a rest period of not less than ten continuous minutes during which claimant was relieved of all duties. *See* OAR 839-020-0050(6) (November 30, 2018).

Claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit. She therefore is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 20-UI-148864 is set aside, as outlined above.

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

DATE of Service: June 16, 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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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