

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0394

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 145013). The employer filed a timely request for hearing. On May 11, 2020, ALJ Meerdink conducted a hearing and issued Order No. 20-UI-149538, concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 23, 2020. On May 18, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) XPO Logistics Worldwide, Inc. employed claimant as a materials handler from March 12, 2012 until February 27, 2020.

(2) On February 27, 2020, claimant was scheduled to work from 6:00 p.m. until 5:30 a.m. Upon his arrival for his shift on February 27, two supervisors went into the room where claimant was clocking in for work to give him a written warning for “unprofessionalism and disrespect” in his emails to the employer. Transcript at 6. The written warning was not a final written warning. Under the employer’s progressive discipline policy, an employee received a final written warning before being discharged.

(3) Claimant noticed the supervisors and stated, “What am I gettin’ wrote up for this time?” Transcript at 6. One supervisor told claimant that they needed to discuss claimant’s email communications during the prior week, that he had already received a verbal warning, and that they were giving him a written warning at that time, but that it was not a final written warning. Claimant asked if they were discharging him, and both supervisors confirmed that the employer was not discharging claimant, and only giving him a written warning. Claimant stated that he “was not signing anything.” Transcript at 6. The supervisors began to explain why they considered claimant’s emails during the prior week to be disrespectful and unprofessional. Claimant and the supervisors argued, and one supervisor read the full warning to claimant. One supervisor asked claimant if he wanted to write a comment on the warning. Claimant responded, “I’m not fucking signing anything.” Transcript at 7. The supervisor told claimant

he was not required to sign the warning, and that she would write that he refused to sign the warning on the warning.

(4) Claimant walked away from the supervisors. One supervisor asked claimant, “Are you resigning[?]” Transcript at 7. The supervisors were willing to allow claimant to continue working. Neither supervisor told claimant he was being discharged. Claimant responded, “What the fuck do you expect me to do[?]” Transcript at 7. Claimant walked back toward the supervisors, pulled his badge from his lanyard, and tossed it on the floor in front of the supervisors. Claimant left the work site. The supervisors never asked claimant to turn in his badge. Claimant did not report to work again.

(5) On March 6, 2020, claimant spoke with a human resources representative and stated he was interested in returning to work. The representative confirmed that she could send claimant an email and asked for his email address. The representative then sent claimant an email asking him to explain his version of what occurred on February 27, and to confirm his desire to return to work in an email to her. Claimant began to receive unemployment insurance benefits. He did not respond to the human resources email because he did not “get along” with the supervisor, and did not want the “worry” of whether he would receive additional warnings. Transcript at 22.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

The claimant asserted that the employer discharged him, but the employer’s witnesses asserted that claimant quit. Therefore, the first issue is to determine the nature of the work separation. 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).

The undisputed testimony was that two supervisors approached claimant on February 27, 2020 to give him a written warning, and told claimant he was not being discharged. The record shows that claimant and the supervisors argued about the warning, and claimant walked away. There was no testimony to show that the supervisors decided at that time to discharge claimant or told him that he was being discharged. Rather, the preponderance of the evidence shows that claimant walked back toward the supervisors, tossed his badge at their feet, left work, and did not return to work. Claimant could have continued to work for the employer, but instead tossed down his badge, left work, and did not return. Such evidence shows the work separation was a quit.

Claimant asserted at hearing that he tossed his badge down because one of the supervisors reached toward him as if to take his badge from his lanyard, and that he tossed his badge down “to stop the argument.” Transcript at 19-20. However, the evidence was uncontested that neither supervisor asked claimant for his badge. Had the supervisors wanted to discharge claimant once he began to walk away, it is not logical that one supervisor would have asked claimant if he was resigning. Claimant also asserted that he did not intend to quit when he tossed down his badge, and left work only because one supervisor told him “[D]on’t ever come back,” after claimant tossed down his badge. Transcript 19. The record shows that it was more probable than not that claimant had already quit before the supervisor made that alleged statement. Moreover, that supervisor denied having told claimant not to return. Transcript at 26.

The preponderance of the evidence shows claimant could have continued to work for the employer, but chose not to do so. The work separation was therefore a quit.

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.

Although claimant asserted that he did not quit work on February 27, 2020, when offered the possibility of sending an email to human resources and potentially returning to work, claimant chose not to do so because he did not “get along” with the supervisor, and did not want the “worry” of whether he would receive additional warnings. Based on this testimony, it is reasonable to presume that claimant quit work on February 27 for the same or similar reasons. Although claimant testified that it was stressful to worry about whether he would receive warnings when he went to work (Transcript at 22), the record does not show that this stress or any other work conditions posed a situation of such gravity for claimant that no reasonable and prudent person would have continued to work for their employer for an additional period of time. In the absence of such evidence, the record shows that claimant quit work without good cause.

Claimant quit work without good cause, and is therefore disqualified from receiving unemployment insurance benefits effective February 23, 2020.

DECISION: Order No. 20-UI-149538 is affirmed.

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

DATE of Service: June 23, 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 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.

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