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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0447

Order No. 20-UI-150432 Modified – Request to Reopen Allowed, No Disqualification
Order No. 20-UI-150434 Modified – Request to Reopen Allowed, No Overpayment or Penalties

PROCEDURAL HISTORY: On March 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective February 2, 2020 (decision # 104621). On March 12, 2020, the Department served notice of another administrative decision, based in part on decision #104621, concluding claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a $1,854 overpayment, a $278.10 monetary penalty, and a 24 week penalty disqualification from future benefits (decision # 194845). Claimant filed a timely request for hearing on each decision.

On March 31, 2020, the Office of Administrative Hearings (OAH) served notice by mail of a consolidated telephone hearing on both decisions scheduled for April 14, 2020 at 9:30 a.m. On April 14, 2020, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 20-UI-148004 dismissing claimant's request for hearing on decision # 104621, and Order No. 20-UI-148001 dismissing claimant's request for hearing on decision # 194845, leaving both decisions undisturbed.

On April 20, 2020, claimant filed a timely request to reopen the April 14, 2020 hearing. On May 18, 2020, OAH served notice of a telephone hearing scheduled for May 28, 2020 at 9:30 a.m. to consider claimant's request to reopen the April 14th hearing, and if granted, the merits of decision # 104621. On May 18, 2020, OAH also served notice of a telephone hearing scheduled for May 28, 2020 at 10:45 a.m. to consider claimant's request to reopen the April 14th hearing, and if granted, the merits of decision # 194845.

On May 28, 2020, ALJ Janzen conducted the hearing regarding decision # 104621, and on May 29, 2020 issued Order No. 20-UI-150432, allowing claimant's request to reopen the April 14, 2020 hearing and affirming decision # 104621. On May 28, 2020, ALJ Janzen conducted a separate hearing regarding decision # 194845, and on May 29, 2020 issued Order No. 20-UI-150434, allowing claimant's request to reopen the April 14, 2020 hearing and modifying decision # 194845 by assessing a $1,854 overpayment

but no monetary penalty or penalty weeks. On June 8, 2020, claimant filed applications for review of Orders No. 20-UI-150432 and 20-UI-150434 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-150432 and 20-UI-150434. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0446 and 2020-EAB-0447).

Claimant did not declare that they provided a copy of their arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments 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).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portions of the orders under review allowing claimant's request to reopen the April 14, 2020 hearing on decisions # 104621 and # 194845 are **adopted.** Also based on a *de novo* review of the entire record in these cases, and pursuant to ORS 657.275(2), the portion of Order No. 20-UI-150434 concluding claimant did not willfully make a misrepresentation to obtain benefits and was not subject to penalties is **adopted.** The remainder of this decision addresses the work separation and overpayment issues.

FINDINGS OF FACT: (1) Isovolta Inc. employed claimant as a member of its "layout . . . cutup" team from June 3, 2019 to February 7, 2020.[1]

(2) Shortly after claimant began her employment, she concluded that her lead worker had an abrasive temperament and leadership style. The lead worker often yelled at team members, including claimant, in front of others. She routinely "snap[ped]" at claimant when claimant asked questions about work processes, which claimant often did because claimant "comprehend[ed]" better by asking questions and being shown what to do rather than seeking answers in print or on an employer computer.[2] In October and November of 2019, claimant discussed the lead worker's abrasive communication style with the operations manager. The manager agreed with claimant that the lead worker often was difficult, and shortly thereafter coached the lead worker about improving her communication style.

(3) After another incident in January 2020, when the lead worker refused to answer a question from claimant and with a "disgusted, hateful look on her face" said to her, "Why don't you look it up on the computer?", claimant became upset and severely stressed when working around the lead worker.[3] She became "sick to her stomach," and cried almost daily just thinking about going to work.[4] While claimant took some days off, the operations manager and production supervisor discussed a possible job transfer for claimant to resolve the problem, but concluded a transfer was not an option.

(4) Claimant returned to work, and on January 15, 2020, a meeting was held to address the conflict between claimant and the lead worker. The meeting was attended by claimant, the lead worker, the

[1] Transcript (Case No. 2020-UI-07062) at 10.
[2] Transcript (Case No. 2020-UI-07062) at 12, 21.
[3] Transcript (Case No. 2020-UI-07062) at 13.
[4] Transcript (Case No. 2020-UI-07062) at 14; (Case No. 2020-UI-07063) at 20.

operations manager, and the production supervisor. During the meeting, claimant was encouraged to state her complaints openly about the lead worker, and claimant did so. After the meeting, the employer scheduled the lead worker to attend an "emotional intelligence" training to assist her in improving her leadership style.[5] However, the meeting did not relieve claimant's daily stress about coming to work. In addition, other coworkers on claimant's team began to decline to answer claimant's questions, and acted like claimant "wasn't there," leaving claimant feeling "isolated."[6]

(5) On February 6, 2020, the members of claimant's team requested a meeting with the operations manager concerning claimant. They complained that claimant "didn't seem like herself [and] a little down," which negatively affected "the morale of the entire team."[7]

(6) On February 7, 2020, the operations manager approached claimant and asked her if she wanted to continue her employment. Claimant told her that she did not because she "couldn't do it anymore."[8] After some further discussion, they mutually agreed that it would be best if claimant quit, which she did.

(7) On February 9, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department established that claimant's claim was valid with a weekly benefit amount of $618. When claimant filed her initial claim, claimant reported that she had been laid off from work. Claimant believed she had been laid off based on the mutual agreement between claimant and the operations manager that it would be best if claimant quit.

(8) Claimant claimed and received waiting week credit or benefits for the weeks including February 9 through March 7, 2020 (weeks 07-20 through 10-20), the weeks at issue. The Department paid claimant benefits in the total amount of $1,854 for weeks 08-20 through 10-20.

CONCLUSION AND REASONS: Claimant voluntarily quit work with good cause. Claimant was not overpaid and is not required to repay $1,854 in benefits, and is not assessed a monetary penalty or a penalty disqualification from future benefits.

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). On February 7, 2020, the operations manager approached claimant and asked her if she wanted to continue her employment. Claimant told her that she did not because she "couldn't do it anymore." After some further discussion, they mutually agreed that it would be best if claimant quit, which she did. Accordingly, the work separation was a voluntary leaving which occurred on February 7, 2020. *See, Smith v. Employment Division*, 34 Or App 623, 579 P2d 310 (1978) ("where the employer and the employee have 'agreed upon a mutually acceptable date on which employment would terminate,' the termination should be treated as a 'voluntary leaving' and not as a discharge'"); *see also*

[5] Transcript (Case No. 2020-UI-07062) at 30.
[6] Transcript (Case No. 2020-UI-07062) at 17, 20-21.
[7] Transcript (Case No. 2020-UI-07062) at 27.
[8] Transcript (Case No. 2020-UI-07062) at 11.

J.R. Simplot Co. v. Employment Division, 102 Or App 523, 795 P2d 579 (1990); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982).

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). 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.

On February 7, 2020, claimant mutually agreed with the operations manager to quit work after concluding she "couldn't do it anymore." Order No. 20-UI-150432 concluded that claimant quit work without good cause reasoning that the record failed to show claimant faced a situation of such gravity that she had no reasonable alternative but to quit.[9] However, the record does not support the order's conclusion that claimant quit without good cause.

Claimant's situation was grave. The preponderance of the evidence shows that the lead worker in question had an abrasive communication style. Claimant's testimony concerning her interactions with the lead worker was not disputed, and the operations manager admitted she not only coached the lead worker about improving her communication style, but that the employer also sent her to "emotional intelligence" training to learn how to satisfactorily communicate with coworkers. Nor was there any dispute in the record that claimant felt "sick to her stomach" and cried almost daily just thinking about work, particularly after the January 15 meeting attended by both claimant and the lead worker when claimant's coworkers declined to answer claimant's questions, making her feel isolated. The operations manager also admitted that not only was claimant "emotional" during their February 7th meeting in which they mutually agreed that claimant quit, but that claimant's coworkers had met with her the day before and complained that claimant's demeanor was so "down" that it negatively affected the morale of the entire group. Rather than direct or encourage claimant's coworkers during that meeting to discontinue their behavior in isolating claimant from the group, the operations manager agreed with claimant that her resignation would be appropriate under the circumstances.

The preponderance of the evidence also shows that claimant had no reasonable alternative but to quit. A job transfer was not an alternative available to claimant as that possibility had been explored and dismissed by the operations manager and productions supervisor shortly before February 7, 2020. Nor does the record show that a leave of absence, if one had been available to claimant, would have improved the circumstances that caused both the employer and claimant to conclude that it would be best if claimant quit. Viewed objectively, under the circumstances described, no reasonable and prudent person would have continued to work for the employer on and after February 7, 2020.

Claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

[9] Order No. 20-UI-150432 at 5.

Overpayment and Penalties. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.* In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may also be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215.

Order No. 20-UI-150434 concluded that claimant received the $1,854 in regular benefits paid to her for weeks 08-20 through 10-20, and that because she received those benefits based upon a false certification to the Department that she he had been laid off during week 07-20, she was liable to repay those benefits to the Department.[10] However, having concluded in this decision that claimant quit work with good cause, claimant was not disqualified from receiving those benefits for the weeks at issue. Accordingly, claimant was not overpaid $1,854 in benefits and is not liable to repay that amount to the Department.

DECISION: Orders No. 20-UI-150432 and 20-UI-150434 are modified, as outlined above.

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

DATE of Service: July 13, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

[10] Order No. 20-UI-149759 at 3.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل 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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