

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0483

Modified
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving benefits effective February 2, 2020 (decision # 145533). Claimant filed a timely request for hearing. On April 15, 2020, the Office of Administrative Hearings (OAH) mailed notice of a telephone hearing scheduled for April 29, 2020 at 2:30 p.m. On April 29, 2020, claimant failed to appear for the hearing, and ALJ Frank issued Order No. 20-UI-148997 dismissing claimant's request for hearing for that reason, leaving decision # 145533 undisturbed.

On May 6, 2020, claimant filed a timely request to reopen the hearing. On May 12, 2020, OAH served, by mail, notice of a telephone hearing scheduled for May 26, 2020 at 9:30 a.m. to consider claimant's request to reopen, and if granted, the merits of decision # 145533. On May 26, 2020, ALJ Frank conducted a hearing, and on June 3, 2020, issued Order No. 20-UI-150578, allowing claimant's request to reopen the hearing and affirming decision # 145533. On June 22, 2020, claimant filed an application for review of Order No. 20-UI-150578 with the Employment Appeals Board (EAB).

Written Argument. Claimant filed her application for review of Order No. 20-UI-150578 on June 22, 2020 and EAB mailed notice of receipt of the application for review on June 24, 2020. Under OAR 471-041-0080(1) (May 13, 2019), written argument was due on July 14, 2020, if the parties chose to submit written argument. On July 14, 2020, claimant requested, by facsimile, an extension of time to file a written argument regarding her application for review. Claimant asserted in her request, "Please be advised that I hereby request an extension of time to submit written arguments, as I have not been able to find legal representation. Thank you." Claimant's Request for Extension of Written Argument.

EAB denied claimant's request for an extension of time to file a written argument regarding Order No. 20-UI-150578. Under OAR 471-041-0080(4)(a)(B), EAB may grant an extension of time to submit written argument if, among other reasons, "[t]he request is promptly made after the party becomes aware of the need for the extension." Claimant did not state when she received EAB's notice of receipt of her application for review, but a letter duly directed and mailed is presumed to be received in the regular

course of the mail. ORS 40.135(1)(q). Claimant did not request an extension until the afternoon of July 14, 2020, the deadline for filing a written argument, and did not state when she became aware of her need for an extension. More likely than not, the request was not made promptly after claimant became aware of that need.

Under OAR 471-041-0080(4)(a)(D), good cause for extending the period of time within which to submit written argument must be shown, and good cause exists when “[t]he circumstances necessitating the extension are beyond the reasonable control of the requesting party” and “[f]ailure to allow the extension would result in undue hardship to the requesting party.” OAR 471-041-0080(4)(b)(A) and (B). Here, claimant did not show that the circumstances necessitating the extension were beyond her reasonable control. She did not state when she began her search for legal representation, what efforts she had made by July 14 to obtain representation, or why she needed additional time to obtain it. Claimant also failed to show that not allowing her an extension of time within which to submit a written argument would result in “undue hardship” upon her. Accordingly, claimant failed to show good cause for extending the period of time within which to submit a written argument.

Under OAR 471-041-0080(4)(a)(E), EAB may grant an extension of time to submit written argument provided “the total period, including all extensions, [does] not exceed 35 days.” Here, claimant did not state how much additional time she needed, and for that reason, EAB was unable to determine if the total period, including all extensions, would exceed 35 days and therefore violate the rule. For those reasons, claimant’s request for an extension of time to submit a written argument was denied.

REQUEST TO REOPEN: Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant demonstrated good cause for reopening the April 29, 2020 hearing is **adopted**.

FINDINGS OF FACT: (1) Welch, Bruun & Green employed claimant as a legal assistant from January 7, 2017 to February 4, 2020. The employer consisted of five attorney law partners and six staff members.

(2) Sometime prior to the work separation, claimant became aware that a male coworker, who assisted the same law partner as claimant, was the subject of complaints by “every other” female coworker because of his conduct toward them. Transcript at 16. One female coworker had complained to a partner about “inappropriate comments” the male coworker had made about her “rear area” and phone calls he had made to her mother complaining about the coworker. Transcript at 23-24. The other female coworker had complained that the male coworker sang “very close” to her ear, which had made her feel “very uncomfortable.” Transcript at 23-24. The law partner who received the complaints did not tell the male coworker’s supervising law partner about the complaints against the male coworker.

(3) In early January 2020, the male coworker others had complained about “threw a glass of water” at claimant as she worked, apparently as some form of joke. Transcript at 11. Claimant did not consider it funny, but rather than complain at the time, she tried to ignore it and returned to her work.

(4) On Friday, January 31, 2020, claimant arrived at work and discovered that the same male coworker had moved the heavy desk in claimant's office to block its entrance, and had also moved her personal belongings, including some clothing. Upon observing the situation and the male coworker laughing at her, claimant became extremely upset at being the subject of ridicule and felt physically threatened. Shortly thereafter, she left work for the day. That same day, the male coworker reported on social media that he had rearranged a coworker's office to block the entrance. The coworker's social media post stated that he, "her boss," and another law partner had found his actions "hilarious," but that the coworker did not find it "even slightly funny at all" before "she flipped out and just left." Exhibit 4 at 4.

(5) On Monday, February 3, 2020, claimant met with her supervising law partner to complain about the male coworker's conduct. She told the law partner that she did not find the coworker's actions on January 31 or his conduct in throwing water at her a few weeks prior, which she had just described to the partner, funny, and that she felt concerned about her physical safety when around him. Exhibit 4 at 1-2; Transcript at 18. Claimant asked that some action be taken against the coworker so that such conduct toward her would end. The law partner, who knew the male coworker was a weight lifter and appeared strong, told claimant that she intended to dismiss the complaint against him and not take any action. Exhibit 4 at 2.

(6) On February 4, 2020, claimant submitted her resignation to the employer describing both "pranks" that had been played on her by the coworker expressing her need to quit "due to feeling bullied at work." Exhibit 4 at 2.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Order No. 20-UI-150578 concluded that claimant quit work without good cause. The order reasoned that the law partner's refusal to warn the male coworker for his conduct was not "grave," and the male coworker's conduct was not "blatantly threatening." Order No. 20-UI-150578 at 4. The order also distinguished between those two things without explaining how they were linked. Order No. 20-UI-150578 at 4. The record does not support the order's conclusion.

Claimant quit work because she felt "bullied at work" after the male coworker in question both threw water at her, and several weeks later, moved her personal belongings and office furniture around to block her entrance to her office, making her the object of ridicule and the brunt of a joke, which he considered "hilarious." When claimant asked her supervising attorney to take some action against him or at least direct him to end his pranks against her, she refused. Transcript at 11. The evidence suggests it is more likely than not that the attorney also found the coworker's pranks funny. Although

the order under review concluded that claimant quit only because the supervising attorney refused to discipline the coworker, both that refusal and coworker's conduct were linked. Claimant testified, "I asked that something be done...because I was concerned about whether...another prank on me [would] be physically harming... [When] she decided to dismiss my complaint...I was just really upset and...decided to quit." Transcript at 10; Exhibit 4. Abusive working conditions can, under some circumstances, amount to good cause. See *McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to "sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits").

Claimant's circumstances at work were grave. Only weeks prior to the January 31, 2020 incident, the male coworker in question "crossed a [physical] boundary" and "threw a glass of water" at claimant as she worked, which he thought was a joke. Transcript at 11. Claimant did not consider it funny, but rather than complain at the time, she tried to ignore it and returned to her work. On January 31, 2020, without any permission or encouragement, the male coworker disrupted claimant's office by moving a heavy desk to block the entrance, and handled and moved her personal belongings, including some clothing items, apparently all for the entertainment of himself and others in the office that did not bear the brunt of the prank. Claimant was justifiably concerned about the coworker's actions, particularly when the coworker had demonstrated by his prior actions that he was focused on female coworkers, their physical attributes, and even their family. Claimant complained about both incidents to their supervising law partner on February 3, and asked the partner to intervene and at least direct the coworker to end his pranks. By February 3, 2020, claimant had concluded that unless the employer directed the coworker to end his attempted pranks against claimant, she might end up being physically harmed by some future prank.

Claimant had no reasonable alternative to quitting when she did. Claimant took the reasonable action of speaking to their supervising law partner about disciplining the coworker for his actions or at least directing him to end his pranks against claimant. However, on this record, the law partner in question did not consider the coworker's actions toward claimant to be inappropriate and apparently told her so and that no action would be taken against him. Although the law partner testified that she intended to schedule a staff meeting about jokes in the workplace, she also testified that such a meeting was never held even after the conduct of the male coworker had caused claimant's resignation. Transcript at 19. More likely than not, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have quit work when claimant did.

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

DECISION: Order No. 20-UI-150578 is modified, as outlined above.

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

DATE of Service: July 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.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.



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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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