

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0485

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 20, 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 unemployment insurance benefits effective January 26, 2020 (decision # 65418). Claimant filed a timely request for hearing. On June 10, 2020, ALJ Snyder conducted a hearing, and on June 18, 2020 issued Order No. 20-UI-151242, affirming the Department's decision. On June 24, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Chesterfield Services employed claimant as a customer service representative from October 15, 2019 until January 31, 2020.

(2) Prior to January 2020, claimant had a regular load of duties including assisting with monitoring care providers' schedules, distributing paychecks and mileage sheets, and handling emails and telephone calls regarding the employer's caregivers and their clients. Claimant also sorted and filed paperwork.

(3) Beginning in early January 2020, claimant's supervisor began removing claimant's duties from her because she felt that claimant was not capable of performing her job duties. As January progressed, the supervisor removed more of claimant's duties from her. Claimant asked her supervisor why her tasks were being removed from her, and the supervisor told claimant that claimant did not perform her duties as well as other staff. Claimant attempted to speak with her supervisor about the removal of her duties, but the supervisor ignored claimant while the supervisor worked on her computer, used her telephone, or refused to listen to claimant. Claimant felt that the supervisor "pretty much blew [her] off" when claimant asked to talk about the circumstances. Transcript at 5. Claimant asked for additional training, but claimant's supervisor and coworkers felt claimant was unable to remember how to do her tasks even after being "walked through" her tasks again, taking notes, and being retrained. Exhibits 2, 3.

(4) Claimant's supervisor continued to remove claimant's job duties from her such that claimant had difficulty finding work to complete and was allowed to leave work early. The supervisor no longer allowed claimant to distribute checks or mileage sheets, and told claimant to pass all incoming calls to coworkers rather than giving information to the callers. The supervisor removed items claimant used for her tasks from claimant's desk and gave them to other employees. Claimant was no longer included in office emails. Claimant completed all the unfinished tasks on the daily and weekly "to-do lists" but still had little work to complete. Transcript at 15-16. Claimant felt "useless" because she had no tasks to complete, and when she asked her supervisor and coworkers for work, her supervisor and coworkers refused to give her tasks to complete. Transcript at 10. The office environment was "tense," and other staff did not speak to claimant or respond to claimant's questions. Transcript at 10.

(5) Claimant called the corporate office once to complain about her working conditions and "got hung up on." Transcript at 15. Claimant did not contact the employer's human resources department about her concerns because staff had told her, "We don't call Corporate." Transcript at 10. Claimant did not know who to contact in human resources or at the corporate office. Claimant did not complain to her supervisor because her complaints were primarily about her supervisor's treatment of her and claimant felt the supervisor would not assist her with a complaint against the supervisor.

(6) On January 31, 2020, claimant quit work because the employer had removed most of her job duties, and because she did not have work to complete at the office, and felt "useless" at work.

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 although the reduction in claimant's assignments and her feeling that she was being "left out of the loop" by her supervisor and coworkers may have amounted to a grave situation for claimant, the order also concluded that claimant did not have good cause to quit when she did because she "had alternatives."¹ The order reasoned that claimant had the following alternatives:

Claimant could have spoken to her supervisor about additional work duties or voiced her concerns with the workplace prior to leaving work, or Claimant could have contacted the claims coordinators, or the corporate office to express her concerns about her work load or to [complain] that her supervisor was not accessible or available to her.²

¹ Order No. 20-UI-151242 at 3.

² Order No. 20-UI-151242 at 3.

However, the record does not support the conclusion that claimant had reasonable alternatives to quitting when she did.

Complaining to her supervisor again was not a reasonable alternative to quitting for claimant. The record shows that claimant's supervisor and coworkers believed claimant lacked the skills to complete her work duties and did not learn her duties despite retraining. Exhibits 2, 3. As a result, the supervisor removed claimant's duties from claimant until claimant was idle, "sitting there, having nothing to do," most of the time. Transcript at 13. Claimant tried to discuss her lack of work with her supervisor, and her attempts did not result in any improvements. The only firsthand evidence at hearing regarding claimant's experiences in her office came from claimant, who testified that her supervisor and coworkers ignored claimant when she asked for work or training to improve her work performance. The record shows that claimant's supervisor preferred for claimant to go home early than to give claimant additional tasks to complete.

Contacting the corporate office again was not a reasonable alternative to quitting for claimant. The corporate office "hung up" on claimant when she called to complain, and claimant's coworkers had advised claimant not to "call Corporate." Claimant did not have information about how to otherwise complain or obtain assistance from the corporate office. Even had she done so, the record does not show that it would have been anything but futile because corporate had hung up on her and claimant's supervisor and coworkers apparently did not have confidence that claimant could learn to perform her duties because she had been unsuccessful after taking notes and being retrained.

Claimant quit work because she felt "useless" at work because she was not given work duties to perform, and her efforts to improve the situation had failed. Claimant's circumstances constituted a grave situation for claimant, and there were no reasonable alternatives to quitting. No reasonable and prudent person in claimant's circumstances would have continued to work for the employer for an additional period of time.

Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 20-UI-151242 is set aside, as outlined above.

J. S. Cromwell and S. Alba;
D. P. Hettle, 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.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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