

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0488

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits effective February 2, 2020 (decision # 73004). Claimant filed a timely request for hearing. On June 17, 2020, ALJ Janzen conducted a hearing, and on June 18, 2020 issued Order No. 20-UI-151189, affirming decision # 73004. On June 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Domino's employed claimant as a delivery driver from January 2020 to February 7, 2020.

(2) Prior to claimant beginning work for the employer, she had a personal friendship with one of the employer's supervisors. That supervisor became claimant's immediate supervisor.

(3) In approximately late January, claimant and the supervisor were communicating off-duty via an instant messaging app. The supervisor asked claimant what she was up to, and claimant responded that she wasn't up to anything because she "didn't feel good." Audio recording at 17:50. The supervisor accused claimant of trying to call off work for the day. Claimant told the supervisor that she was not. The supervisor responded that claimant was going to call off and told her not to say she was not, and accused claimant of disrespecting her. Claimant said that it was difficult to look at the supervisor as a boss because they had been friends first, and thought that when they communicated outside of work they were communicating as friends, but she knew the supervisor was her boss while claimant was at work.

(4) The supervisor subsequently complained to the employer's manager that claimant was being disrespectful to her while off duty. The manager reprimanded claimant based on that complaint. Claimant tried to explain that she had not been disrespectful, and that the supervisor had had a personal friendship outside of work, but the manager told claimant she was required to be respectful regardless whether she was on or off duty.

(5) During the first week of February, claimant reported to work and notified the supervisor that she could not drive deliveries that shift because her car was not working. The supervisor asked claimant to drive the supervisor's car. Claimant refused, and said she was not comfortable driving the supervisor's car because she did not want to be responsible if the car was damaged. The supervisor appeared to become angry. She then went into the walk-in cooler and began to throw and slam items while yelling at claimant, the only other person in the building, "I can't fucking believe this, you should just take my car * * * I need reliable people." Audio recording at 13:30. The supervisor called the manager to report claimant was unable to drive, and sent claimant home early from work that day.

(6) Claimant had spoken with the manager several times about her concerns about working with the supervisor. The manager had told claimant to "deal with it." Audio recording at 16:28. After the supervisor's behavior during the first week of February, claimant felt she could not continue working with the supervisor any longer.

(7) On February 7, 2020, claimant spoke with the manager again and asked the manager to move her to a different shift so she no longer had to work with the supervisor. The manager refused, and asked claimant if that meant she was going to quit her job. Claimant did not feel comfortable working with the supervisor any longer, and since the manager was not willing to do anything to resolve the situation or change claimant's schedule, claimant was not willing to "sit there and be treated bad." Audio recording at 22:30. Effective February 7, 2020, claimant voluntarily left 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 claimant quit work without good cause because, although the supervisor had "yelled away from claimant's presence," the situation was not grave, and claimant "could have tried maintaining a professional relationship with [the supervisor] for a period of time to determine if things would improve before deciding to quit." Order No. 20-UI-151189 at 2. The record does not support that conclusion.

At the time claimant quit work, the supervisor had already reported claimant to the manager for being disrespectful, even though claimant had not been disrespectful, was off-duty, and thought she was speaking to the supervisor as a friend. The manager was not willing to listen to claimant's explanation and reprimanded her. Within a week, the situation escalated to the point that the supervisor became so angry that she slammed and threw refrigerated items in the walk-in cooler while simultaneously yelling and using foul language toward claimant – the only other person in the building – simply because

claimant could not make deliveries that shift. The supervisor's escalating behavior created a situation of gravity for claimant.

It appears on this record that, at all relevant times, claimant had attempted to maintain a professional and respectful relationship with the supervisor, treating her as a friend while off duty and as her boss while at work. Despite claimant's attempts, the supervisor appears to have been unprofessional towards claimant, apparently falsely complaining to the manager that claimant had been disrespectful, and using aggressive language and movements simply because claimant could not make deliveries for a shift. Given the escalation of the supervisor's behavior with respect to claimant over a short span of time, it was not reasonable to expect claimant to continue trying to maintain a professional relationship with the supervisor.

Likewise, on this record, claimant had repeatedly complained to the manager about the supervisor's behavior, and the manager responded that claimant had to "deal with it." When claimant asked to move to a different shift so she did not have to work directly under the supervisor, the manager refused and asked claimant if she was going to quit, without offering any other alternatives to claimant that might have helped resolve the situation short of quitting work. Because there is no evidence on this record that additional avenues of complaint, much less avenues of complaint likely to change claimant's working conditions, and because the manager refused to do anything to help resolve claimant's situation, it is more likely than not that no reasonable alternatives to quitting work existed at the time claimant quit.

Claimant therefore voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 20-UI-151189 is set aside, as outlined above.

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