

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0501

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 29, 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 March 8, 2020 (decision # 161351). Claimant filed a timely request for hearing. On June 10, 2020, ALJ Janzen conducted a hearing, and on June 12, 2020, issued Order No. 20-UI-150988, concluding claimant quit work with good cause. On June 30, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) RPD Services LLC employed claimant as a mechanic from February 25, 2020 until March 11, 2020.

(2) Claimant understood that the person who was “in charge of the shop” was the operations manager. Transcript at 11. Claimant checked in with the operations manager every day he worked. Claimant sometimes received direction from the shop foreman as well. Claimant did not know who was the employer’s owner.

(3) Claimant felt stress at work from hearing the operations manager yell at employees, such as “yelling at people to hurry up.” Transcript at 32. In early March 2020, claimant told the operations manager that claimant “didn’t do well with all the yelling” in the workplace and that it made him “stressed out.” Transcript at 13. The operations manager told claimant “not to get stressed out,” and claimant responded that he would “do [his] best, but . . . that’s how I react to . . . the stress of yelling.” Transcript at 13.

(4) At 5:37 a.m. before his shift on March 10, 2020, claimant sent the employer’s operations manager a text message stating that he was unable to work that day because he needed to care for his children while his fiancé took one of claimant’s children to the emergency room. Exhibit 1. The operations manager immediately responded, “Ok.” Exhibit 1.

(5) Later on March 10, 2020, claimant’s wife went to the emergency room for medical care for herself. The health care provider recommended to her that she contact the local health department and that if she

or her household members showed symptoms of the coronavirus, or there was a possibility that she or her household members had coronavirus, they should self-quarantine for two weeks. At 4:43 p.m. that day, claimant sent the operations manager another text message informing him that his fiancé also had to go to the emergency room that day, and that the health care provider there told her that she and claimant's household should self-quarantine for two weeks. Claimant stated in his text message that his family did not qualify for coronavirus testing at that time, and that he was "not sure what I should do in this situation." Exhibit 1. Neither the operations manager nor another employer representative responded to claimant's 4:43 p.m. text. The operations manager assumed claimant would not report to work while in self-quarantine.

(6) Not having received a response from the employer to his text message, claimant reported to work at his normal time the morning of March 11, 2020. The operations manager immediately called claimant into his office. The operations manager told claimant that if claimant had the coronavirus and was told to quarantine but reported to work, and the employer "got shut down" because they had the coronavirus, he would "sue [his] ass." Transcript at 6. Claimant told the operations manager that he had contacted the local health department. The operations manager told claimant that he "needed to not lie to him, if [claimant] was going to be calling out 'cause [he] had the brown-bottle flu, [he] needed to be upfront and honest with him." Transcript at 6. Claimant responded that he "was being honest with him." Transcript at 6. Claimant explained that his fiancé had to take claimant's youngest child of eight to the emergency room, and that he had no other person who could care for the other children in her absence. The operations manager told claimant that "he didn't want to hear it," and sent claimant into the shop to work. Transcript at 6.

(7) About five minutes later, the operations manager called claimant into the "wash bay" with the shop foreman and began to question claimant about whether claimant "wanted to be there." Transcript at 10. The first time the operations manager asked claimant, claimant responded, "I don't know." Transcript at 10. The operations manager perceived claimant's "body language" as showing that he did not want to be at work. Transcript at 20. The operations manager asked claimant again if claimant wanted to be there, and claimant did not respond. Transcript at 10. The operations manager asked claimant a third time if he wanted to be at work, and said that "if [claimant] didn't choose he was going to choose for [claimant]." Transcript at 10. Claimant turned around, walked out and told the operations manager he would be back in two hours for his belongings.

(8) On March 11, 2020, claimant quit work due to the operations manager's behavior toward him. Transcript at 11.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

Claimant left work on March 11, 2020 because he felt that the operations manager's treatment of him created a "hostile" workplace environment for him. Transcript at 6. The record shows that the operations manager's behavior created a situation of gravity for claimant. It is undisputed in the record that on the day that claimant quit work, the operations manager accused claimant of being "dishonest" and of missing work on March 10 due to alcohol consumption, and threatened to sue claimant if the other employees were to contract COVID-19. The record does not show the operations manager was justified in distrusting the reason claimant gave for missing work on March 10, or for why he accused claimant of negligence for reporting to work. The record shows that on March 10, claimant communicated his absence and the reason for the absence to the operations manager, and attempted to communicate about his family's need to self-quarantine. It was understandable that claimant reported to work on March 11 because he did not know what the employer's expectation was regarding claimant's potential need to miss work and self-quarantine. Once claimant returned to work in the wash bay, the operations manager verbally confronted claimant again, with the only justification offered at hearing from the operations manager being claimant's "body language" such as "shuffling his feet," "low energy," and lack of excitement. Transcript at 20. However, claimant's demeanor may have been the product of how the operations manager had just treated him in the office, or of exhaustion due to claimant's family medical situation. What was not understandable from the record was the operations manager's hostile, insensitive response to claimant's efforts to explain his circumstances, and the operations manager's subsequent questioning that served to goad claimant into quitting.

The operations manager's conduct toward claimant created a situation of such gravity that claimant did not have a reasonable alternative to quitting work when he did. Given the operations manager's behavior toward claimant, it was not a reasonable alternative for claimant to try to repair the relationship with the operations manager by complaining directly to him. Claimant had complained to the operations manager in early March that his yelling caused claimant stress, and the operations manager responded that claimant should "not get stressed out." On this record, claimant had no reason to believe that approaching the operations manager later about the March 11 incident would lead to productive discussion or resolve the operations manager's apparent bias against claimant.

Although the employer's owner testified that the employer had a grievance process, claimant reported to either the operations manager or the shop foreman, and did not know who the owner was. Both the operations manager and the shop foreman were part of the final incident on March 11, and the record does not show that the foreman gave claimant any indication that there was an alternative to either continuing to work with the operations manager despite his mistreatment or quitting. Moreover, it is reasonable to infer that claimant was emotionally and physically exhausted by his family situation and the combination of the operations manager's accusations and goading was such that claimant felt he had no reasonable alternative but to quit when he did.

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

DECISION: Order No. 20-UI-150988 is affirmed.

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

DATE of Service: August 7, 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 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 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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