

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0595

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 19, 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 February 2, 2020 (decision # 105619). Claimant filed a timely request for hearing. On August 18, 2020, ALJ Monroe conducted a hearing, and on August 20, 2020, issued Order No. 20-UI-153217, affirming the Department's decision. On August 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) First Baptist Church of Salem employed claimant as a culinary helper and cook from August 14, 2017 until February 5, 2020.

(2) Several years prior to February 2020, claimant was diagnosed with anxiety, a chronic condition that caused her to experience symptoms, including headache, vomiting, insomnia, and chest pain when she encountered stressful situations. Claimant also was treated for a heart condition in the past.

(3) During the course of her employment, the employer assigned claimant to work with the kitchen lead and another culinary team employee who claimant believed had treated her poorly, in a manner that she concluded constituted "bullying." Transcript at 14. However, the kitchen lead and culinary team coworker both stopped working for the employer in December 2019, and the employer hired a new kitchen lead who began work on January 13, 2020. During the interim period, the employer scheduled claimant to work longer hours, which claimant found to be stressful.

(4) In January 2020, the employer's executive pastor held several discussions with claimant regarding the culinary team transition, describing the employer's plans to hire a new kitchen lead worker, and affirming his intent for claimant to continue working in the capacity of the kitchen lead's primary assistant. The executive pastor made a statement to claimant referring to her as the "number two" going forward, which claimant considered disparaging, but which the executive pastor hoped would affirm claimant's value to the culinary team. Transcript at 8, 35. Around that time, the executive pastor also

conducted a review of the organization's finances and instructed the new kitchen lead to ensure that the employee schedules remained within the allotted budget. The kitchen lead notified claimant that, at the request of the executive pastor, her work schedule would be reduced to approximately 20 hours per week, which caused claimant stress over whether she would be able to meet her monthly financial obligations.

(5) During January 2020, claimant experienced substantial work-related anxiety over the changing conditions in the kitchen, and her variable and likely reduced workplace hours. Claimant frequently discussed her experience working in the kitchen and her symptoms with the office employees, who occasionally related that information to the executive pastor. The executive pastor then met with claimant and requested that, should she have any problems related to working in the kitchen, she report her concerns to him directly as the overseer of the culinary team and the person with the authority to take remedial action. However, claimant understood the executive pastor's instruction as prohibiting her from speaking to anyone else in the workplace besides him, which she considered "being bullied," and which caused her increased anxiety. Transcript at 8. Claimant's work-related anxiety from all sources resulted in substantial physical symptoms such as headaches, nausea, insomnia and chest pain to the extent that she became concerned that she might have a heart attack.

(6) During the first two weeks of January 2020, claimant worked approximately 30 hours per week. During the third week of January, claimant worked 8 hours, but declined the opportunity to work a special event, which would have given her an additional 14 hours that week. The employer paid claimant an hourly wage of \$12. Claimant drove to and from work each day, and her residence was located approximately one mile from the employer. The employer provided claimant with a work smock, and claimant was not required to purchase a uniform. However, the employer occasionally requested that claimant wear a white shirt and black pants, which she purchased, for special events such as funerals.

(7) Claimant did not consult a medical professional regarding her anxiety or related symptoms because she did not trust physicians after concluding that her son's death was caused, in part, by being prescribed the wrong medications. Claimant did not report her concerns about her anxiety to her direct supervisor on January 26, 2020, when she called in sick due to a reported "family emergency." Transcript at 5. Claimant did not report her concerns about her anxiety and potentially reduced hours to the executive pastor because she did not trust men based on her history as a victim of domestic violence over many years. Had claimant discussed her work and health concerns with the pastor, he would have attempted to resolve them by increasing her hours or allowing claimant to take a leave of absence. The pastor considered claimant to be a "valued" employee, and had demonstrated his concern for her in the past by arranging for pastoral counseling with himself and others and financial aid and housing-related assistance. Transcript at 38-40. Claimant also had the option of discussing her work-related concerns, including any related to "being bullied" by the pastor, with the employer's human resources representative, who would have attempted to resolve them outside of the purview of the pastor, but claimant did not do so because she "didn't think it would do any good." Transcript at 8, 44.

(8) On February 5, 2020, claimant quit work without notice by returning her keys and employee credit card to the employer. Claimant quit work to protect her health due to her anxiety regarding her working conditions and potential reduction in hours, and because she felt bullied by the pastor when he directed her to discuss work-related issues only with him.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without 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) (September 22, 2020). “[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). Several years prior to her work separation, claimant had been diagnosed with anxiety, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit work to protect her health due to her anxiety over her working conditions and potential reduction in hours, and because she felt bullied by the pastor when he directed her to discuss work-related issues only with him. Claimant’s work-related anxiety from all sources resulted in substantial physical symptoms such as headaches, nausea, insomnia and chest pain to the extent that she became concerned that she might have a heart attack. Even though claimant did not consult any medical professionals about her anxiety condition or symptoms in January 2020, her description of their effect on her health shows that her situation was grave. Transcript at 9.

However, although the impact of an individual’s working conditions on their health may constitute good cause for quitting work, the health concerns must be of such gravity that there are no reasonable alternatives to quitting. Here, claimant did not meet her burden to establish that she lacked reasonable alternatives to quitting work when she did. Claimant had the reasonable alternative of discussing her anxiety and concerns about her working conditions with the pastor and requesting a leave of absence. She had the alternative of discussing with him her distress over his perceived instruction prohibiting her from speaking to anyone else in the workplace and requesting that he clarify or change his instruction. She had the alternative of discussing with him her concern about not being given enough work hours to meet her financial obligations and requesting additional hours. Given that the pastor had demonstrated his concern for her in the past by arranging for pastoral counseling with himself and others, financial aid, and housing-related assistance, which claimant did not dispute, the record fails to show that discussing her concerns with the pastor and requesting changes or a leave of absence were unreasonable alternatives to quitting or that it would have been futile for claimant to do so. Claimant also had the alternative of discussing her health concerns and belief the pastor was bullying her with the employer’s human resources representative and requesting a leave of absence or some level of intervention with the pastor. Although claimant asserted that she did not pursue that alternative because she “didn’t think it would do any good,” she did not assert or show why she believed that bringing those concerns to the human resources representative would have been futile. Because claimant had reasonable alternatives to quitting due to her health concerns, she did not establish that no reasonable and prudent person with the characteristics and qualities of an individual with her impairment would have continued to work for their employer for an additional period of time.

To the extent claimant may have quit work due to the employer's reduction of her work hours, claimant also failed to establish good cause. In applying OAR 471-030-0038(4), an individual who leaves work due to a reduction in hours has left work without good cause unless continuing to work substantially interferes with a return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). At hearing, claimant did not assert or show that the reduction in her hours interfered with her ability to search for full time work with another employer. Although claimant asserted that she had to commute to and from work each day, she only lived one mile from the employer and the cost of gasoline for her commute would have been minimal. Claimant identified no other recurring costs of working for the employer. Claimant worked 8 hours at an hourly wage of \$12 during the week before she quit and according to the employer, could have worked another 14 hours during that week but chose not to do so. Claimant did not dispute that the employer also was willing to allow her to work at least 20 hours per week going forward. Claimant therefore failed to show that the cost of continuing to work for the employer exceeded the remuneration she would have received. Thus, to the extent claimant quit work due to the reduction of her hours to 20 per week, she failed to establish that she quit work with good cause. Claimant also failed to show that if she was stressed over her ability to meet her recurring financial obligations due to her reduced hours, how quitting her job and reducing her income to zero would have alleviated that stress.

Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 2, 2020 and until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 20-UI-153217 is affirmed.

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

DATE of Service: September 25, 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 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.

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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