

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0605

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 24, 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 May 24, 2020 (decision # 124700). Claimant filed a timely request for hearing. On September 3, 2020, ALJ Murdock conducted a hearing, and on September 9, 2020, issued Order No. 20-UI-153751, modifying the Department's decision by concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits, effective May 31, 2020. On September 11, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record when reaching this decision.

FINDINGS OF FACT: (1) West Meyer Inc. employed claimant as a payroll and administrative assistant from December 7, 2017 until June 3, 2020. The employer was owned and managed by LW and JW, husband and wife.

(2) Early on in claimant's employment, claimant sought medical treatment for a stomach condition, suspected to have been caused by food poisoning or a sensitivity to beef or pork. Thereafter, claimant experienced stomach pains in response to stress and was prescribed medication to help control her symptoms.

(3) During the last two years of claimant's employment, the owners' marital relationship often was antagonistic, both at home and at work. Claimant witnessed the owners engage in intense arguments at work during which claimant observed LW scream at JW, dump water over her, "destroy her office," and throw computer monitors to the floor. Transcript at 5. On one occasion, claimant was at work when she

heard the two of them loudly argue in JW's office, followed by "a crash", and "yell" by JW. Transcript at 19. When claimant went to investigate, she observed LW step back from JW, causing JW to fall and injure her knee.

(4) JW and claimant considered each other friends and JW made claimant a confidante about the physical abuse she often endured from LW outside of work. As their marital relationship continued to deteriorate, and the abuse became more frequent, claimant advised JW to seek outside help from law enforcement or domestic violence organizations and consider leaving the relationship before she suffered more serious injuries and abuse. JW's continuing accounts of the physical abuse she suffered from her husband at home caused claimant increasing stress, anger and apprehension about returning to work, in part because it triggered memories of her life as a child with an abusive stepfather. Claimant repeatedly told JW that JW's reports of domestic violence caused claimant stress because of her childhood experiences and because she cared about her. Claimant began to experience such apprehension about going to work and having to observe or hear about the owners' continuing domestic violence that she often cried before leaving for work. JW recognized that JW's reports to claimant about her domestic violence experiences with LW were not an ordinary function of claimant's job and gave claimant a \$2.00 per hour raise for "having to listen to me and everything that goes on here." Transcript at 83.

(5) During the evening of January 9, 2020, JW texted claimant that LW had been intoxicated at their home and struck JW in the head, causing her to fall and suffer a painful leg injury. She later texted claimant a picture of her injury. Exhibit 3. Claimant advised JW to go to the hospital for treatment and contact the police, but JW chose not to because she thought LW would become even more violent if she did.

(6) Beginning in January 2020, LW routinely blamed claimant for some of the employer's financial problems. However, whenever LW accused claimant of performing work duties improperly, claimant explained to LW why she believed LW was mistaken.

(7) Altercations between the owners continued on almost a weekly basis. In mid-April 2020, claimant saw her physician about increasing stomach pains she was experiencing, which claimant attributed to her stress from work, and was prescribed medication to reduce stomach acid. Claimant requested the opportunity to work part-time, which the employer granted for a short period due to the pandemic. When an office coworker died and the employer received a Paycheck Protection Program (PPP) loan, the employer again required claimant to work full-time. Working at home was not an alternative the employer would have considered or granted.

(8) On the evening of May 28, 2020, claimant received a voicemail message from JW, crying on the phone, stating, "she had gotten beat up" again. Transcript at 26. Claimant called JW back and spoke to her for a while because she wanted to be sure she was okay, but also told her, "I can't help you. I can't do this." Transcript at 84. When claimant reported for work the next day, a Friday, LW and JW acted like nothing had happened, which claimant recognized was a pattern with them.

(9) Over the weekend and the next Monday and Tuesday, claimant was "sick to [her] stomach" thinking about the domestic violence involving the owners. Transcript at 27. Claimant did not report for work because she believed the owners would have fought again over the weekend and she did not want to hear

about it. When claimant reported for work on Wednesday June 3, 2020, she worked for about an hour and then decided she could not take the stress anymore. She sent the owners a text message that stated she was quitting because the “stress of the place is making me sick.” Transcript at 39-40. Shortly thereafter, claimant sent a separate text message to JW stating she could not handle being around LW because “I know he goes home and beats...you daily.” Exhibit 6. Claimant quit that day to protect her mental and physical health.

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

As a preliminary matter, claimant and JW disagreed regarding relevant facts at issue. For example, claimant asserted that JW told her on January 9, 2020, that LW had assaulted JW that evening, whereas JW testified that the injury JW suffered that day was not intentionally caused by LW, but was the result of an accident. Transcript at 12-13, 53. However, claimant’s testimony on that issue was consistent with contemporaneous text messages sent to her by JW. In those January 9, 2020 text messages, JW told claimant that LW had “punched” her “in the side of the head” and “knocked [her] out” causing her to fall on a metal shelf and sustain a painful knee injury. Exhibit 3 at 1, 5. JW also texted claimant that she was “beat up” that day by LW. Exhibit 3 at 3. JW was evasive when asked whether, on May 28, 2020, she had called claimant and told her that LW had “tried to kill” her, by responding, “I have no idea.” Transcript at 49-50. JW also remarked during the hearing that she could not remember if or when certain events involving her and LW had occurred. Transcript at 55-56. For these reasons, the record shows that claimant’s testimony was more probative and credible than that of JW. Accordingly, where the parties’ evidence conflicted, facts were found in accordance with claimant’s evidence.

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). For more than a year during claimant’s employment, claimant had a stomach condition that caused her stomach pain in response to stress, likely 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.

Order No. 20-UI-153751 concluded that claimant quit work without good cause, reasoning that although claimant “left work because she was stressed about the behaviors of the owners,” she failed to establish good cause because claimant’s testimony “that she had told [JW] not to tell her about the fights or violence...was not more persuasive than the testimony of [JW], who asserted that she would have stopped discussing those matters with claimant had she told her that it stressed her out so much.”¹ However, the preponderance of the credible evidence in the record does not support the order’s conclusion.

¹ Order No. 20-UI-153751 at 3.

Claimant's situation was grave. She regularly experienced mental distress over the domestic violence between LW and JW she either witnessed in the office or heard about from JW outside of work, primarily because it dragged up memories of her childhood experiences with an abusive stepfather. Although it was hard for claimant "to explain the feeling" the owners' domestic violence created in her, it caused her to agonize over going to work to the extent it she would often cry when preparing to do so. She also sought medical help from her provider due to the increased stomach pains she experienced which she attributed to the stress the work environment created. Transcript at 25. JW's voicemail to her on May 28, 2020 stating, "she had gotten beat up" again was the final incident which caused claimant to become "sick to [her] stomach" over the weekend thinking about going in to work on Monday. She called in sick for that reason on June 1 and June 2, before going in to work on June 3, 2020. After working for about an hour that day, claimant concluded she could no longer continue to work for the employer because the "stress of the place [was] making [her] sick" and sent an email to both owners to that effect. Claimant then wrote a separate email to JW in which she explained she could no longer tolerate LW repeatedly beating JW and that she needed to quit to protect her "mental health." Exhibit 6.

Claimant had no reasonable alternative to quitting when she did. She had requested the opportunity to work only part time, but that option ended when the owners decided that claimant needed to work full time to protect their PPP loan. JW also admitted that working from home was not an option that would have been available to claimant. Transcript at 73. For the reasons previously explained, claimant credibly established that she told JW that JW's reports to her of LW's domestic violence to JW caused claimant stress and that "[she] can't do this," because of childhood experiences with an abusive stepfather and because she cared about JW. When the domestic violence between the owners and JW's reports of that violence to claimant continued, claimant concluded she had to quit to protect her health.

Claimant established, more likely than not, that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairment, who also experienced severe mental stress over the owners' continuing domestic violence issues, would have continued to work for the employer for an additional period of time. 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-153751 is set aside, as outlined above.

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

DATE of Service: October 16, 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 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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