

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0625

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 1353149). The employer filed a timely request for hearing. On March 31, 2020, ALJ Snyder conducted a hearing, and on April 3, 2020 issued Order No. 20-UI-147451, concluding claimant voluntarily left work without good cause and therefore was disqualified from receiving benefits effective December 8, 2019. On April 22, 2020, claimant filed an application for review with the Employment Appeals Board (EAB), which EAB received five months later on September 22, 2020.

FINDINGS OF FACT: (1) Jamie L. Hazlett LLC employed claimant as a paralegal from August 2019 to December 11, 2019.

(2) Claimant worked for one of the employer's associate attorneys. The associate attorney yelled at claimant and micromanaged her work. Claimant disliked the associate attorney's behavior and experienced stress as a result. Claimant felt compelled to work through most of her breaks, and also disagreed that the associate attorney would not allow claimant to offset her missed breaks by taking time off work later. Claimant did not report concerns about missing breaks to the owner.

(3) In September 2019, claimant met with the owner about the associate attorney. The owner suggested claimant speak with the associate attorney about her concerns. Claimant later approached the associate attorney about her concerns; the associate attorney indicated that the owner had already reported that claimant had complained about her. Claimant perceived that the associate attorney was upset with her for complaining to the owner. The associate attorney's behavior toward claimant did not change.

(4) Between September and December 6, 2019, claimant continued to have concerns about the way the associate attorney treated her. She experienced stress, anxiety, back pain, and insomnia as a result of the associate attorney's behavior. During that span of time, although claimant mentioned her ongoing concerns to the associate attorney, claimant did not report the associate attorney to the owner again. The owner once sent a text message to claimant asking how the work was going, and claimant did not make further complaints or indicate that her concerns about the associate attorney remained unresolved.

(5) On December 6, 2019, the owner and associate attorneys called claimant into a meeting. They had concerns about claimant's safety at home and wanted to discuss that issue and their concerns about claimant's work schedule. During the meeting, claimant and the others agreed that claimant would modify her work schedule. During and after the meeting, claimant did not mention the associate attorney's behavior or how the behavior affected claimant, nor did she otherwise notify the owner that the associate attorney's behavior was still inappropriate.

(6) On December 11, 2019, the associate attorney yelled again. Claimant perceived that she was yelling in anger. Claimant became upset, went to the owner's office, said she was quitting work, and left. Claimant did not tell the owner that she was quitting because of the associate attorney's behavior or ask the owner to resolve the situation or intervene on her behalf. Claimant collected her belongings and left the workplace without having discussed with the owner why she was leaving.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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).¹

On this record, the associate attorney for whom claimant worked regularly yelled at and micromanaged claimant, causing claimant to experience physical symptoms of stress. The record also establishes that claimant was regularly unable to take legally required rest and meal breaks. That potentially unlawful working condition coupled with claimant's description of the associate attorney's behavior toward her suggests it is more likely than not that claimant faced a grave situation at the time she left work.

In order to establish good cause, however, claimant must also establish that she had no reasonable alternative to quitting work at the time she left. Claimant did not meet her burden on that issue. Claimant had approached the owner with concerns about the associate attorney in September 2019 and, after the owner counseled claimant about the matter, did not subsequently communicate to the owner that she had ongoing concerns. The record also fails to establish that claimant notified the owner of her inability to take state-mandated breaks and lunches or asked the owner to intervene on her behalf with respect to taking breaks. On December 6th, the owner and associate attorneys met with claimant and she did not disclose having any ongoing concerns about either matter.

¹ Claimant experienced stress, back pain, and insomnia. Claimants with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) 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. On this record, however, claimant's symptoms were situational, not the result of permanent or long-term impairments. Claimant's voluntary leaving is therefore analyzed in the context of a "reasonable and prudent person" without impairment, "of normal sensitivity, exercising ordinary common sense."

Speaking with the owner was likely a reasonable alternative to quitting work, and, on this record, would not have been futile. Given the owner's willingness to help claimant in September 2019, the owner following up with claimant thereafter, and the owner's and attorneys' asking claimant to a meeting in part to discuss their concerns about claimant's safety in her home environment, the record suggests it is more likely than not that the owner would have listened to claimant if she had reported her ongoing concerns and attempted to work with claimant to resolve them. Because claimant did not report concerns about the associate attorney or breaks to the owner after the September 2019 meeting, though, and did not tell the owner about the associate attorney's conduct before quitting on December 11th, the employer did not have the opportunity to attempt to provide a satisfactory resolution. Speaking with the owner about her ongoing concerns was a reasonable, non-futile alternative to quitting work.

For those reasons, claimant voluntarily left work without good cause. Claimant therefore is disqualified from receiving regular unemployment insurance benefits until she has re-qualified under Employment Department law.²

DECISION: Order No. 20-UI-147451 is affirmed.

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

DATE of Service: September 24, 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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² This decision is confined to claimant's disqualification from regular unemployment insurance benefits. Claimant might be eligible for benefits under one of the Department's other unemployment insurance benefit programs, however. If claimant has questions about her benefits or alternative benefit programs, she may contact the Department; the Department's "Contact Us" form is available at: <https://unemployment.oregon.gov/contact-us>.



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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