EO: 200
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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

283
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0696

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 25, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective January 12, 2020 (decision # 92658). Claimant filed a timely request for hearing. On October 22, 2020, ALJ Buckley conducted a hearing, and on October 29, 2020 issued Order No. 20-UI-155878, affirming decision # 92658. On November 3, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Simplex Manufacturing Company employed claimant as a sustaining engineer from November 2014 until January 13, 2020.

(2) On August 21, 2019, claimant and two other employees were engaged in a conversation about a project when MZ, the employer's CEO at the time, approached the three employees and asked them why the project they were discussing was not being worked on. The employees explained the issue to MZ, but MZ repeatedly interrupted them, chastised them for shipping the project late, and suggested that he may not award them year-end bonuses due to issues like the one they were discussing. Claimant felt that MZ's statements were tantamount to harassment, and sent an email to his supervisor that day describing the incident as such.

(3) In August 2019, claimant was diagnosed with depression, caused, in part, by the August 21, 2019 incident. Exhibit 2. Claimant requested and was granted time off for August 27, 28, and 29, 2019. On August 29, 2019, claimant requested and was granted time off from September 3, 2019 until October 21, 2019 under the Family Medical Leave Act (FMLA).

(4) On October 1, 2019, the employer's business was sold. At that time, MZ stepped down as CEO and began working for the employer in a business-development position. Claimant continued to see MZ at work at least occasionally.

(5) After claimant returned to work from FMLA leave, he filed a complaint with the employer regarding the incident involving MZ on August 21, 2019. The employer's human resource department interviewed claimant as part of the complaint-investigation process. During that interview, claimant reported that he had not been involved in any other incidents involving MZ.

(6) Claimant believed that he was treated differently by other employees after he filed the complaint. Most other employees were unaware that claimant had filed the complaint.

(7) On or around December 30, 2019, claimant submitted a letter of resignation to the employer, indicating that his last day of work would be January 13, 2020. Claimant had concluded that the employer had not taken sufficient action on his complaint regarding the August 21, 2019 incident, which caused him to feel uncomfortable continuing to work for the employer. However, had MZ apologized to claimant for the incident, claimant would not have quit.

CONCLUSIONS AND REASONS: Claimant 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). Claimant had depression, 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.

Claimant's decision to quit stemmed from an August 21, 2019 incident between himself and the employer's then-CEO. That incident either caused or contributed to claimant's depression diagnosis, which in turn caused claimant to take time off work for several weeks from August through October 2019. After claimant returned to work, the employer's human resources department conducted an investigation into claimant's complaint regarding the August 21, 2019 incident, but did not resolve the complaint in a way that satisfied claimant. Claimant ultimately felt uncomfortable continuing to work for the employer, and quit.

The order under review concluded that claimant voluntarily quit his job because he felt that the employer did not correctly handle his complaint against MZ, and because he believed he had been harassed for filing the complaint. Order No. 20-UI-155878 at 3. In fact the record indicates that while several factors, all relating to the August 21, 2019 incident involving MZ, contributed to claimant's decision to quit, claimant would have continued to work for the employer had either MZ or upper management apologized to him. Transcript at 8, 9, 17.

The evidence in the record shows that the August 21, 2019 incident affected claimant's mental health. It does not demonstrate that the incident was part of a pattern of ongoing behavior that continued to affect claimant's health or his ability to perform his work, nor does it explain why an apology would have made the difference necessary for claimant to continue working. Further, the record does not demonstrate why claimant was able to continue working for the employer for more than two months after he returned from FMLA leave, without any further incidents involving MZ, before deciding that he was uncomfortable continuing to work for them. Accordingly, claimant has not met his burden to prove that no reasonable and prudent person with the characteristics and qualities of an individual with depression would have continued to work for their employer for an additional period of time. Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 12, 2020.[1]

DECISION: Order No. 20-UI-155878 is affirmed.

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

DATE of Service: December 8, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

[1] This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit https://unemployment.oregon.gov for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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