

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0737

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective July 5, 2020 (decision # 103804). Claimant filed a timely request for hearing. On November 18, 2020, ALJ Janzen conducted a hearing, and on November 19, 2020 issued Order No. 20-UI-156633, affirming decision # 103804. On November 24, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Asphalt Pavement Association employed claimant as an office manager from April 2016 until July 8, 2020.

(2) During the entire length of her employment, claimant felt that she had a “strained” relationship with her supervisor, the executive director. Transcript at 6. During a number of interactions with the executive director, claimant felt that he spoke to her in a manner that was disrespectful or unprofessional. Claimant also felt that she was treated differently from other employees because she was a woman.

(3) In or around May 2020, the executive director discussed concerns about claimant’s work performance with the employer’s executive committee. At that time, the committee determined that the organization needed to be prepared in case they decided to discharge claimant, or in case she otherwise became unavailable. Subsequently, a member of the executive committee informed claimant of this discussion, and claimant became convinced that the employer planned to discharge her.

(4) On July 8, 2020, claimant met with the executive director to discuss her concern that he was planning to discharge her. The executive director did not deny that he intended to discharge her. Because of this, as well as claimant’s belief that the executive director continued to treat her disrespectfully, claimant voluntarily quit that day.

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). 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 testified that she quit because she disliked the way her supervisor interacted with her over the course of her employment, and felt that it led to “. . . hurt, anger, and frustration. . . .” Transcript at 9. Claimant and her supervisor offered conflicting testimony of the various interactions between them, spanning the year or so prior to claimant’s separation from work, that contributed to claimant’s dissatisfaction with her working conditions. However, it is unnecessary to resolve those discrepancies in order to determine whether claimant had good cause to quit work, because despite her long-standing dissatisfaction, she continued to work for the employer well past the point at which her concerns arose.

The relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017); *see accord Kay v. Employment Department*, 284 Or App 167, 391 P3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or App 604, 403 P3d 423 (2017); *Kay v. Employment Department*, 292 Or App 700, 425 P3d 502 (2018) (*Kay II*). Here, the record indicates that claimant only made the decision to quit during the conversation with her supervisor on July 8, 2020. Claimant’s testimony does not indicate that the situation with her supervisor materially worsened on or shortly prior to that date. Rather, the only notable development on or around that day was her decision to confront her supervisor about her belief that he intended to discharge her, and the supervisor’s failure to deny that he did have such an intention. Thus, while her decision may have been informed by her overall dissatisfaction with her working relationship with her supervisor, claimant chose to quit because of her belief that the employer intended to discharge her.

Claimant’s decision to quit instead of potentially being discharged does not automatically mean that she quit without good cause. *See, e.g., McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects); *Dubrow v. Employment Dep’t.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation). However, claimant has not met her burden to prove that no reasonable and prudent person would have continued to work for the employer for an additional period of time. She did not, for instance, offer evidence to suggest that any special harm, outside of the loss of employment, would come to her if she waited to be fired. Likewise, claimant did not explain in her testimony why, after a month or two of believing she was about to be fired, she chose July 8, 2020 in particular to confront her supervisor about the matter.

The evidence in the record suggests instead that, more likely than not, claimant arbitrarily chose that date because she had become frustrated with the uncertainty of the situation:

And in my efforts to speak to [the executive director] about it, regarding my job security and things like that, he – he said anyone could get fired at any time, or any of us could lose our job at any time. He wasn't – didn't see anything in the foreseeable future. I was going to be purchasing a home, and so someone should let me know that this was going to happen to me. So, in July, after waiting a few months for [the executive director] to pull the trigger on whatever he was going to do, that did not happen.

Transcript at 12. Such frustration, while understandable, was not a reason of such gravity that claimant had no reasonable alternative but to leave work. For that reason, claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective July 5, 2020.

DECISION: Order No. 20-UI-156633 is affirmed.¹

S. Alba and D. P. Hettle.

DATE of Service: December 23, 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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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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.