

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0017

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 112239). The employer filed a timely request for hearing. On December 10, 2020, ALJ Snyder conducted a hearing, and on December 18, 2020 issued Order No. 20-UI-157892, affirming decision # 112239. On January 5, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Great Clips for Hair 9375C employed claimant as a hairstylist from April 2018 until March 11, 2020.

(2) In December 2019, claimant began working with another stylist. Shortly after he was hired, the new stylist began making inappropriate comments towards claimant, insulting her on the basis of her age and skills as a stylist. The other stylist sometimes set up his station next to claimant's in order to engage in this behavior. If claimant moved away from him to another station, the other stylist would sometimes follow her and continue the behavior.

(3) On January 24, 2020, claimant contacted the general manager and complained about the other stylist, explaining that he made offensive and disparaging comments and made customers uncomfortable by interrupting her time with them. The general manager explained to claimant that the other stylist was a "social person" who "want[s] to interact with everybody." Transcript at 16. On January 25, 2020 and January 27, 2020, the general manager spoke to the other stylist about professionalism on the job and "talked about him not butting into or including himself in other people's conversations." Transcript at 17. The general manager did not feel at that point that the other stylist needed to be reprimanded.

(4) In early February 2020, claimant was cutting the hair of a young boy who was nervous about getting his hair cut. After claimant reassured the boy that she would not hurt him, the other stylist told the boy that claimant was going to cut the boy's ear off. Transcript at 11-13. Claimant reported the incident to her supervisor.

(5) On other occasions, the other stylist “made rude comments about [claimant’s] personal life,” including telling her “how stupid [she] was” and suggesting that claimant’s disabled granddaughter was the result of inbreeding. Transcript at 5–6.

(6) On February 7, 8, and 9, 2020, the general manager again spoke to the other stylist about his conduct. On February 21, 2020, claimant spoke to the general manager to express “high concern” about working with the other stylist. Transcript at 19. On February 23, 2020, claimant spoke to the general manager again to express that she did not want to work with the other stylist because she felt “talked down to” and “belittled,” and told the general manager that she wanted the employer to fire the other stylist. Transcript at 19–20. The employer did not fire the other stylist, but offered to transfer him to a different location so that claimant would no longer have to work with him.

(7) On or around February 29, 2020, the employer transferred the other stylist to a different location. The employer nevertheless scheduled the other stylist to work at claimant’s location on March 5, 7, and 8, 2020. During a shift around that time, the other stylist leaned towards claimant’s workstation while she was cutting a customer’s hair and stated that claimant had been “doing hair for 65 years [and] you’d think she’d figure it the fuck out by now.” Transcript at 13. Claimant reported the incident to her supervisor.

(8) On or around March 8, 2020, after claimant’s most recent customer had left the premises, the other stylist suggested to claimant that the customer had been “hitting on” him. Transcript at 27. The other stylist then searched through claimant’s credit card receipts to find the receipt signed by the customer, used the receipt to find the customer’s information in the employer’s computer system, and copied the customer’s phone number into his own phone. Claimant reported the incident to the owner.

(9) On March 9, 2020, claimant again spoke to her supervisor about the other stylist, but the supervisor told claimant that “her hands were tied.” Transcript at 6.

(10) On March 11, 2020, due to the other stylist’s continued inappropriate behavior and comments towards claimant, claimant quit work. On March 12, 2020, the employer offered to transfer claimant to another location so she would not have to work with the other stylist, but claimant declined the offer.

CONCLUSIONS AND REASONS: Claimant quit work with 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 quit work because she faced a grave situation created by a series of incidents in which, over the course of a few months, a coworker repeatedly insulted her and her family and interfered with her

work while she worked with customers. The record shows that claimant attempted to address these issues on several occasions by requesting that the employer intervene. While the employer did intervene, the record does not show that the employer's repeated discussions with the other stylist had the effect of curbing the offensive behavior. Further, the employer continued to schedule the other stylist to work with claimant even after they had transferred him to a difficult location. The record therefore does not show that the employer would, more likely than not, never again have scheduled claimant to work with the other stylist. As a result, accepting a transfer to another location—even had the employer offered it before claimant quit—would not have been a reasonable alternative to quitting. The record therefore shows that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

For these reasons, claimant quit work with good cause and is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 20-UI-157892 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 9, 2021

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.

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