

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0082

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 27, 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 benefits effective June 7, 2020 (decision # 165139). Claimant filed a timely request for hearing. On January 7, 2021, ALJ Micheletti conducted a hearing, and on January 15, 2021, issued Order No. 21-UI-159239, affirming decision # 165139. On February 3, 2021, 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 her 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 claimant's written argument only to the extent that it was based on information received into evidence at the hearing.

FINDINGS OF FACT: (1) Pacific Tool & Gauge LLC employed claimant as an office manager from May 4, 2020 until June 11, 2020.

(2) Claimant initially worked in the employer's sales office, performing accounts receivable duties. In early June, claimant moved into the employer's main office, where she worked alongside BF, the accounts receivable clerk, and SK, a co-owner of the business. SK was temporarily working in that office at that time, performing various administrative duties, while the employer sought to hire someone to perform those duties permanently. Claimant reported directly to SK and DK, the other co-owner of the business and SK's husband. BF did not hold supervisory authority over claimant.

(3) Shortly after she was hired, claimant began to feel uncomfortable with SK's demeanor, believing that SK behaved in a "hostile" manner towards other employees out of anger. Transcript at 8. SK's behavior was not specifically directed towards claimant. However, it "scared [claimant] at times," and caused claimant to experience stress-related conditions such as heartburn, headaches, hyperventilation, loss of appetite, and insomnia. Transcript at 14, 18-19.

(4) Between June 8, 2020 and June 10, 2020, claimant attempted to set a meeting with DK in order to discuss her concerns, but she was unable to do so within that time. The employer did not have a dedicated human resources officer at the time. Instead, SK performed those duties temporarily.

(5) On June 11, 2020, BF informed claimant that SK had told BF the previous evening about her plans to discharge claimant because of SK's belief that claimant was "worthless." Transcript at 6. BF then advised claimant to go to lunch and not return.

(6) On June 11, 2020, due to the effects of work-related stress and her belief that SK intended to discharge her, claimant quit work. Claimant would not have quit on that day if she did not believe that SK intended to discharge her, but would have instead waited for an opportunity to discuss the situation with DK. Claimant was not concerned at the time that being discharged might be a "blemish" on her employment record. Transcript at 27.

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). 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 of the manner in which SK interacted with claimant's coworkers, and the effects that the behavior had on claimant. However, the incident which directly led claimant to quit on June 11, 2020 was being informed by BH that the employer planned to discharge claimant. Because claimant was already dissatisfied with the work environment, claimant took this information as a sign that she should quit because it was "God's way of telling [her] to just leave." Transcript at 19. At hearing, SK testified that she neither intended to discharge claimant at the time nor informed anyone that she intended to do so. Transcript at 44. Because claimant offered only a second-hand, uncorroborated account of SK's alleged intent to discharge her, SK's firsthand testimony about her own intention is given more weight. Claimant therefore has not met her burden to prove that the employer had any intention of discharging her.

Further, even if claimant had met her burden on that issue, she did not offer evidence to suggest either that she quit out of concern that being discharged would negatively impact her future employment prospects, or that being discharged would have had such an impact. For those reasons, to the extent that claimant quit because of her belief that she was about to be discharged, claimant has not shown by a preponderance of the evidence that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant's assertion that she experienced workplace stress and related health effects is undisputed. However, to the extent that claimant quit due to the effects of workplace stress, claimant has not met her burden to prove that she faced a situation of such gravity that she had no reasonable alternative but to leave work. At hearing, claimant testified that her stress stemmed from SK's behavior such as complaining about other employees, swearing, slamming the phone down, and "scream[ing that] her husband could divorce her if he wanted to because she was just sick of this 'f-ing' place." Transcript at 12. Claimant also testified that she unsuccessfully attempted to address the issue with SK. Transcript at 13. SK refuted these assertions and testified that she did not scream or yell, was not unhappy to be in the office, and did not complain about her husband at work. Transcript at 41–42. SK also testified that she would have stopped using foul language if claimant had asked, and otherwise would have tried to make the situation better if claimant had complained, but that claimant made no such complaint. Transcript at 41–42. Because the evidence here is equally balanced, claimant has not proven by a preponderance of the evidence that SK acted unreasonably or abusively in such a way as to cause the stress she experienced at work, or that claimant attempted to address the issue with her.

Similarly, to the extent claimant quit work due to the health issues she was experiencing, claimant has not met her burden to prove that she faced a situation of such gravity that she had no reasonable alternative but to leave work. In light of the fact that claimant only worked for the employer for about a month, and directly with SK for only 9 days, that the health effects were new and not an exacerbation of prior health conditions, and that she would have continued working for the employer for at least some additional period of time if not for her belief that she was about to be discharged, claimant has not shown 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 without good cause and is disqualified from receiving benefits effective June 7, 2020.

DECISION: Order No. 21-UI-159239 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 12, 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.

NOTE: 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.

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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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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