

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0364

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective February 7, 2021 (decision # 135101). Claimant filed a timely request for hearing. On April 13 and 15, 2021, ALJ S. Lee conducted a hearing, and on April 28, 2021 issued Order No. 21-UI-165695, affirming decision # 135101. On May 5, 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 claimant's reasonable control prevented her 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. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Franz Family Bakeries employed claimant as an outlet store clerk from December 2, 2014 until February 9, 2021.

(2) Claimant and her supervisor had a contentious relationship. On January 26, 2021, the supervisor instructed claimant to stack bread in a particular way in a section of the employer's store. The supervisor placed the bread stacking instructions on a work board. Claimant thought the supervisor's instructions would make stacking the bread more difficult, and wrote on the work board below the instructions, "this is only going to make the job more difficult." April 13, 2021 Transcript at 23.

(3) On February 9, 2021, the supervisor's manager came to the store and met with claimant about her relationship with the supervisor. The manager brought up the message claimant left on the work board. Claimant thought that she was being accused of calling her supervisor "a pain in the butt." April 13, 2021 Transcript at 17. Claimant informed the manager that the supervisor "had told him a lie" and claimant "would not discuss a lie with him." April 13, 2021 Transcript at 17.

(4) The manager insisted that the two discuss the matter, which made claimant feel as though she was being “harass[ed].” April 13, 2021 Transcript at 17. Claimant was uncomfortable and her heart was racing, so she asked a coworker in an adjacent room to sit in on the meeting to observe. The coworker agreed to do so.

(5) The meeting continued with the coworker observing. Claimant continued to refuse to discuss the message she left on the work board. Claimant said, “Why don’t you just go ahead and fire me, you know, let’s get this over with, just let me go.” April 15, 2021 Transcript at 5. The manager responded, “You can go if you need to go.” April 15, 2021 Transcript at 5. Claimant then stated “I’m gonna go, you know, so you’re gonna fire me.” April 15, 2021 Transcript at 5. The supervisor’s manager said, “I guess” and shrugged his shoulders “like . . . that wasn’t his intention.” April 15, 2021 Transcript at 5. Claimant walked out of the room.

(6) Moments later, claimant returned and asked, “So, what’s the reason? You know, is it . . . insubordination? I just need that for unemployment.” April 15, 2021 Transcript at 5. The supervisor’s manager shrugged his shoulders and said, “I guess that’s what it is.” April 15, 2021 Transcript at 5.

(7) Claimant left the employer’s store and did not work for the employer again.

CONCLUSION AND REASONS: Claimant voluntarily left work without good cause.

Nature of Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

When the supervisor’s manager met with claimant and brought up claimant’s message on the work board, claimant refused to discuss the matter. The supervisor’s manager insisted the matter be discussed. In response, claimant asked the supervisor’s manager to fire her, and then stated “I’m gonna go, you know, so you’re gonna fire me.” In requesting to be fired, stating that she leaving, and determining that doing so would result in the employment relationship being severed, claimant demonstrated that she was unwilling continue working for the employer before there was any indication from the employer that it would not allow her to do so. In stating, “I guess” and shrugging his shoulders like firing claimant was not his intention, the manager was merely acknowledging that claimant was severing the employment relationship, and not severing it himself or indicating that the employer was unwilling to allow claimant to continue working for the employer. The record therefore establishes that claimant could have continued working for the employer for an additional period of time, and that the work separation was a voluntary leaving.

Voluntary Leaving. 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 without good cause. Claimant did not establish that her situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit. Claimant decided to quit working for the employer because the supervisor’s manager insisted they discuss the message claimant left on the work board, which made claimant nervous and uncomfortable. However, claimant failed to offer evidence that, viewed objectively, her discomfort was such that she had no reasonable alternative but to leave work, and that no reasonable and prudent person would have discussed the work board message with the manager and continued working for the employer for an additional period of time. Absent such a showing, claimant failed to establish that she quit work with good cause.

Claimant therefore quit work without good cause and is disqualified from receiving benefits effective February 7, 2021.

DECISION: Order No. 21-UI-165695 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: June 15, 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 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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