

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0429

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 8, 2021, 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 January 10, 2021 (decision # 102435). Claimant filed a timely request for hearing. On May 5, 2021, ALJ Messecar conducted a hearing, and on May 12, 2021 issued Order No. 21-UI-166652, affirming decision # 102435. On June 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: In support of her application for review, claimant submitted written arguments on June 1, 2021 and June 23, 2021. EAB did not consider claimant's June 1, 2021 written argument when reaching this decision because claimant did not include a statement declaring that a copy of that argument was provided to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's June 23, 2021 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) City of Monroe, Oregon, employed claimant, last as finance officer, from March 29, 2017 until January 11, 2021.

(2) The employer employed five individuals total. At the time of her hire, the city administrator was claimant's supervisor. However, in March 2020, the mayor became claimant's supervisor after the employer discharged the city administrator. Claimant assumed all of the former city administrator's job responsibilities, including court clerk, acting city recorder, and utility biller. Claimant's job responsibilities also included answering telephone calls from the employer's customers.

(3) In June 2020, the employer hired claimant's coworker, SM, as the employer's full-time water treatment operator and gave SM some of claimant's former job responsibilities. The mayor shifted job

responsibilities from claimant to SM to “distribute the workload more evenly,” not because of dissatisfaction with claimant’s job performance. Transcript at 26. Claimant felt “blindsided” by the mayor’s decision to redistribute some of her job responsibilities and complained to the mayor via email regarding what she perceived as a “lack of communication” regarding the changes. Transcript at 26, 28.

(4) In September 2020, the fire chief asked claimant if she knew why the fire hydrants in the city were running. At the time of the fire chief’s question, claimant was unaware that SM was conducting a “hydrant flushing” requiring the fire hydrants to be turned on. Transcript at 16. On occasion, there was a lack of communication between SM and claimant because they worked in different locations. Claimant directed the fire chief to turn off the fire hydrants only to find out later that afternoon that SM was conducting the hydrant flushing. This incident, like other instances involving “lack of communication” at work, made claimant feel like the public perceived her as if she did not know what she was doing. Transcript at 16-17.

(5) On or about January 1, 2021, claimant advised the former mayor, the incoming mayor, and SM that the COVID-related seating capacity information that was being provided to both the planning commission and the city council was contrary to state COVID regulations. The two mayors told claimant “that they couldn’t do anything at this point.” Transcript at 9. SM ignored claimant. Although the employer did not follow claimant’s advice regarding COVID regulations, claimant did not face health or safety risks as a result.

(6) The stress from claimant’s perception that the employer was “not doing things correctly” affected claimant’s personal life by preventing her from sleeping at times, and was “draining emotionally and mentally.” Transcript at 10, 12.

(7) The employer’s inaction in response to claimant’s attempts to correct the COVID-related misinformation was “the last straw” for claimant. Transcript at 7. On January 7, 2021, claimant gave the employer written notice that she would quit work on January 11, 2021 due to the “lack of communication between the city staff” that occurred after the employer hired SM as the water treatment operator. Exhibit 1. Claimant also indicated that she was quitting because she was “ignored or told [she was] wrong” when she tried to correct misinformation, and because the collective impact of these factors had caused her stress and had adversely affected her ability to sleep. Exhibit 1. Claimant sent a separate email to SM expressing a similar rationale for her decision to leave the employer. SM responded to claimant that he was sorry if there had been any miscommunication with claimant, that he “valued her . . . expertise” and “wished her the very best.” Transcript at 23.

CONCLUSIONS AND REASONS: Claimant voluntary left 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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App. 752, 13 P3d 1027 (2000).

Claimant has failed to meet her burden to show that she left work for good cause. The record establishes that “the last straw” that caused claimant to quit work was when the employer failed to follow her advice regarding COVID-19 misinformation. Transcript at 7. Claimant felt that the employer’s inaction, coupled with prior instances of “not doing things correctly” and workplace miscommunication, had adversely affected the public perception of her job competence and claimant’s personal life, including her ability to sleep. While the evidence confirms claimant’s sincere objection to the employer’s inaction, none of these instances, taken together or standing alone, created a situation of such gravity that no reasonable and prudent person would have continued working for the employer for any additional period of time.

Even assuming that the employer made an error in judgment by not following claimant’s advice regarding COVID-19-related guidelines, any such error did not create a situation of such gravity for claimant that she had no reasonable alternative but to leave work, particularly where claimant had fulfilled what she understood to be her duty to bring the misinformation to the employer’s attention. The preponderance of the evidence, including SM’s response to claimant’s personal resignation email expressing his appreciation for her expertise, and apologizing for any prior miscommunication, supports the conclusion that rather than quitting her employment, claimant had the reasonable alternative of prompting further discussion with the employer about her concerns about the misinformation and seeking a more palatable solution. The record does not show that such alternative would have been futile.

Likewise, the lack of communication during the “hydrant flush” situation did not create a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave their employment. The preponderance of the evidence reflects that the “hydrant flush” situation, while unfortunate, was the type of miscommunication that can occur in an employment setting, like claimant’s work setting, where there are few employees operating in different work locations. While claimant’s subjective embarrassment over the incident is understandable, it does not objectively establish good cause for her decision to quit her employment. Under these circumstances, the “hydrant flush” situation did not provide good cause for claimant’s decision to leave work, nor does the preponderance of the evidence show that claimant’s role in the situation subjected her to any sort of public scorn.

In addition, although claimant was dissatisfied with how the employer communicated their decision to redistribute some of claimant’s job responsibilities to other employees, the situation was not so grave that a reasonable and prudent person would have felt they had no alternative but to leave work. The record demonstrates that the employer did not undertake this action to punish claimant. Rather, the employer acted within their discretion to distribute the employer’s workload more evenly. Claimant’s dissatisfaction with the employer’s decision neither alters the employer’s right to make such decisions, nor does it create a circumstance of such gravity that claimant had no reasonable alternative but to leave work.

For all of these reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-166652 is affirmed.

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

DATE of Service: July 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.

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.

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.



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 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 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.