

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0455

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective October 20, 2019 (decision # 140318). Claimant filed a timely request for hearing. On May 17, 2021 and June 2, 2021, ALJ Murdock conducted hearings, and on June 3, 2021 issued Order No. 21-UI-168063, concluding that the employer discharged claimant but not for misconduct and that claimant was not disqualified from receiving benefits. On June 7, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dogs Day Out employed claimant as a part-time dog bather from May 10, 2019 to November 8, 2019.

(2) Claimant's schedule as a dog bather was by appointment only and the work could be "sporadic." Transcript at 15. Because she commuted several miles by bicycle to and from her job, claimant texted the employer "every day or every week" to determine if she had any dog bathing appointments scheduled. Transcript at 8. Due to the sporadic nature of the bathing work, claimant sometimes did dog daycare or office hour shifts for the employer so claimant could meet her personal financial obligations. At all relevant times, the employer was in the process of opening a separate grooming room for claimant and had ordered claimant her own grooming table and allowed her to pick out paint samples.

(3) On Tuesday, October 22, 2019, claimant performed work for the employer for the last time.

(4) On Thursday, October 24, 2019, claimant texted her manager and asked whether the employer had scheduled any dogs for claimant to bathe that day. The manager told claimant that she had no dogs on the schedule for that day. Claimant did not feel well. Claimant thanked the manager and told her that she would be "drinking lots of OJ and sleeping." Exhibit 1 at 8. The manager texted claimant and told her that the dogs she had scheduled for Friday, October 25, 2019 had been rescheduled with one of claimant's coworkers and that claimant should "go ahead and take [Friday, October 25, 2019] off and get better." Exhibit 1 at 8.

(5) On Monday, October 28, 2019, claimant texted the manager to ask whether the employer had scheduled any dogs for claimant to bathe that day. The manager responded that claimant had no dogs on the schedule for that day and that “it has been super slow all week.” Exhibit 1 at 6. Claimant replied that “mornings are always the worst for me head cold wise.” Exhibit 1 at 6. The manager told claimant to “stay home and get better.” Exhibit 1 at 6. Claimant replied to the manager that she “was gone Wednesday-Friday moving.” Exhibit 1 at 6. The manager replied to claimant, “[Y]ou have nothing the rest of the week.” Exhibit 1 at 6.

(6) On Sunday evening, November 3, 2019, claimant texted her manager and the owner to ask whether the employer had scheduled any dogs for claimant to bathe on Monday, November 4, 2019. Exhibit 1 at 17. Claimant also asked whether the three of them could have a conversation “sometime soon,” and whether there were any daycare hours available during the next two months. Exhibit 1 at 17. The manager responded that as far as the manager knew, claimant had no dogs scheduled for Monday, November 4, 2019, but that she would “double-check” the next day when she arrived to work. Exhibit 1 at 17. Claimant reiterated her request that the manager “let [her] know when all three of us can have a quick chat.” Exhibit 1 at 17. The manager replied to claimant, “OK. Not sure when it is gonna be a crazy week for me.” Exhibit 1 at 17. The owner did not respond to claimant’s request for a meeting because she assumed claimant’s request was related to the availability of daycare hours, which the employer did not have available to offer.

(7) On Monday, November 4, 2019, claimant texted her manager to ask whether the employer had any daycare hours available. The manager replied to claimant, “No.” Exhibit 1 at 18. Later that evening, claimant went to the employment location after business hours to pick up her paycheck. Claimant was unable to locate her paycheck and noticed that her grooming equipment “had been kind of tucked away.” Transcript at 15. At that point, claimant felt she needed to speak with the owner and manager “and actually get some answers.” Transcript at 15. Claimant retrieved her personal grooming tools because she needed them for a trip to Southern Oregon where she was going to provide bathing and grooming services for family members.

(8) On November 5, 2019, the employer did not schedule claimant to perform any bathing services. On Tuesday, November 5, 2019, claimant texted the manager to ask about the whereabouts of her paycheck. The manager told claimant that the paycheck was by the time clock and that she preferred that claimant not enter the workplace after business hours. Claimant responded that she had tried to get to the workplace prior to closing and would remember next time not to enter after work hours. The manager later met claimant at a location near claimant’s home to deliver claimant’s paycheck to claimant.

(9) Claimant also texted the head groomer on Tuesday, November 5, 2019, to tell her that she had received an internship offer at a grooming establishment in Eugene, Oregon, and that she was “[p]robably going to start after [she gave her] notice [to the employer].” Exhibit 1 at 14. Claimant also texted the head groomer, “[The owner and manager] are dodging me and my book was put away when I went for my check. They want me out. [The owner] won’t even text me back.” Exhibit 1 at 14. The grooming establishment’s internship was not available to begin until 2020.

(10) On November 6, 2019, the employer did not schedule claimant to perform any bathing services. On November 6, 2019, the head groomer told the manager that claimant had received an internship offer in Eugene, Oregon.

(11) On November 7, 2019, the employer did not schedule claimant to perform any bathing services. On November 7, 2019, the manager discovered that claimant had removed her personal grooming tools from the workplace. The manager did not ask claimant why she had removed her grooming tools from the workplace. The employer believed that claimant's decision to remove her tools, coupled with her decision to pursue an internship with another employer, meant that claimant had voluntarily decided to quit her employment. June 2, 2021 Audio Record at 9:42 to 10:05; Transcript at 28.

(12) On November 8, 2019, the head groomer texted claimant to ask if her decision to retrieve her grooming tools meant she had quit her employment with the employer. Claimant responded that she "was going to drop her key off this evening," that she had not "heard anything from anyone except [the manager] meeting me and giving me a check," that she had "a couple of baths out of town tomorrow and wanted some of my tools," and that "it is obvious that I am on my way out." Exhibit 1 at 7. Claimant believed that because the employer was not giving her work and did not arrange to meet with her, "the only other thing [she] could have done was stopped" working. Transcript at 6-7.

(13) Later on November 8, 2019, the employer requested that claimant return her key to the employer. Claimant returned her key and retrieved her final paycheck. At no time did the employer ever tell claimant that she was on her "way out." June 2, 2021, Audio Record at 6:12.

CONCLUSIONS AND REASONS: Claimant voluntarily quit working for the employer with good cause.

Nature of the work separation. The first issue in this case is the nature of the 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).

The record shows that the employer had made investments in claimant's professional development as a groomer, including their decision to open a separate grooming room for claimant, and order claimant her own grooming table. The employer's investment in claimant support the conclusion that the employer did not plan to discharge claimant, and that the lack of bathing appointments, dog daycare, and office hours scheduled for claimant after October 22, 2019 was due to a lack of business and not an intentional decision by the employer to stop allowing claimant to work. Furthermore, the evidence demonstrates that claimant was never told by the employer that she was on her "way out." Rather, the evidence shows that claimant reached her decision to "stop" working for the employer because after October 22, 2019, she was neither able to obtain any work hours, nor was able to schedule a meeting with the owner and the manager to discuss her employment situation. In light of these circumstances, the preponderance of the evidence establishes that claimant voluntarily quit her employment because she could have continued to work for the employer for an additional period of time, but chose not to do so.

Voluntary quit. 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 evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

The evidence demonstrates that claimant had good cause to voluntarily quit her employment because she was not able work from October 23, 2019 through November 7, 2019, despite directing multiple requests to the employer for hours, and attempting unsuccessfully to schedule a meeting with the employer to discuss her employment situation. Furthermore, this evidence, coupled with claimant’s November 4, 2019 observation that her grooming tools had been “tucked away” at the workplace, made it reasonable for claimant to infer that she was unlikely to receive additional work from the employer in the future. In light of the gravity of the situation, which included claimant’s inability to obtain work hours, or arrange a meeting with her employer to discuss her employment situation, no reasonable and prudent person in claimant’s position would have continued to work for their employer for an additional period of time. Likewise, the employer’s nonresponsive approach to claimant’s multiple requests for a meeting demonstrates that any other reasonable alternatives, short of leaving, would have been futile. As such, claimant voluntarily quit her employment with good cause and she is not disqualified from receiving unemployment insurance based on this work separation.

DECISION: Order No. 21-UI-168063 is affirmed.

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

DATE of Service: July 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.

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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 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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