

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0479

Modified
No Disqualification

PROCEDURAL HISTORY: On November 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 92101). The employer filed a timely request for hearing. On December 7, 2020, the Office of Administrative Hearings (OAH) served by mail notice of a telephone hearing scheduled for December 21, 2020 at 8:15 a.m. On December 21, 2020, the employer failed to appear at the hearing, and ALJ Monroe issued Order No. 20-UI-157969, dismissing the employer's request for hearing for failure to appear. On January 8, 2021, the employer filed a timely request to reopen the December 21, 2020 hearing. On February 4, 2021, OAH served by mail notice of a telephone hearing scheduled for February 23, 2021 at 10:45 a.m. On February 23, 2021, ALJ Amesbury conducted the hearing, at which claimant failed to appear, and on February 25, 2021 issued Order No. 21-UI-161630 granting the employer's request to reopen, vacating Order No. 20-UI-157969, and reversing decision # 92101 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective June 28, 2020.

On March 16, 2021, claimant filed a timely request to reopen the February 23, 2021 hearing. On May 5, 2021, OAH served by mail notice of a telephone hearing scheduled for May 25, 2021 at 10:45 a.m. On May 25, 2021, ALJ Amesbury conducted a hearing, and on June 2, 2021 issued Order No. 21-UI-167895 granting claimant's request to reopen, vacating Order No. 21-UI-161630, and reversing decision # 92101 by concluding that claimant quit work without good cause and was disqualified from receiving

benefits effective June 28, 2020.¹ On June 11, 2021, claimant filed an application for review of Order No. 21-UI-161630 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to reopen the February 23, 2021 hearing is **adopted**. The remainder of this decision addresses whether claimant voluntarily quit work with good cause.

FINDINGS OF FACTS: (1) SurveyMonkey.com LLC employed claimant, most recently as a manager of data engineering, from March 10, 2014 until July 1, 2020.

(2) On March 11, 2020, the employer placed claimant on a medical leave of absence. In May or June 2020, while claimant was on leave, the employer commenced an investigation regarding, among other things, claimant's alleged failure to disclose a romantic relationship she had with her supervisor. The employer retained an attorney as an independent investigator to conduct the investigation. The investigator held multiple telephone interviews with claimant and instructed her not to discuss the investigation with her supervisor and coworkers.

(3) On or about June 9, 2020, during one of the interviews, the investigator told claimant that the employer would terminate her immediately if she returned to work following the end of her medical leave. Claimant did not disclose to her supervisor and coworkers what the investigator said because the investigator had instructed her not to speak with them about the investigation.

(4) Shortly thereafter, claimant contacted a representative in the employer's human resources (HR) office and asked whether she would be terminated if she returned to work at the end of her leave. The HR representative informed claimant that "they couldn't speak to it." Transcript at 21. The HR representative stated that if the employer did terminate claimant, the fact she was terminated would be documented permanently in her employee file. Following this conversation, claimant concluded that if the employer terminated her, the employer would disclose the fact she had been terminated to future prospective employers, which would hinder her ability to find employment in the future.

(5) On June 15, 2020, the employer extended claimant's medical leave of absence to June 30, 2020. Concerned that the employer would terminate her when the leave of absence expired and that a record of termination in her employee file would hinder her ability to find future employment, claimant tendered a resignation notice on June 16, 2020 with an effective resignation date of July 1, 2020. Claimant voluntarily left work on July 1, 2020.

(6) At the time claimant tendered her resignation notice, the employer had not decided whether to terminate claimant when she returned from leave because the investigation was incomplete at that time.

¹ Order No. 21-UI-167895 did not state the effective date of claimant's disqualification from benefits. However, as the order found that claimant left work on July 1, 2020, it is presumed to have established June 28, 2020 as the effective date of claimant's disqualification from benefits. Order No. 21-UI-167895 at 2.

CONCLUSIONS AND REASONS: Claimant voluntarily 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.

The order under review concluded that claimant lacked good cause to quit because she did not “offer persuasive evidence that she faced a grave situation.” Order No. 21-UI-167895 at 6. The main rationale the order under review offered to support this conclusion was its view that claimant’s testimony regarding what the investigator told her and why she quit work was not credible. Order No. 21-UI-167895 at 6. The record does not support the conclusion and rationale of the order under review.

The reasons offered by the order under review to disbelieve claimant’s testimony are not well founded. For example, the order stated that claimant’s testimony was inconsistent because in addition to testifying that the investigator told her the employer would terminate her upon her return to work, claimant also testified that the investigator had advised her to resign. Order No. 21-UI-167895 at 6. However, this is a misstatement of the evidence, as claimant never testified that the investigator advised her to resign. The only advice claimant testified to receiving from the investigator was that she not discuss the investigation with her supervisor and coworkers.² Transcript at 19–20. The order under review also concluded that claimant’s testimony regarding why she quit was not credible because it appeared to conflict with a message in claimant’s resignation notice that “Covid has taught me much about my priorities, and I am moving home to Maryland to be closer to my family.” Order No. 21-UI-167895 at 6; Exhibit 1 at 75. However, at hearing, claimant credibly explained that this message was intended to convey her plans for the future, was meant “more as a goodbye to [her] team,” and was not an explanation for why she was quitting. Transcript at 30–31. The order under review also rejected claimant’s testimony regarding what the investigator told her because it found the testimony of the employer’s witness more persuasive on that point. Order No. 21-UI-167895 at 6. However, the employer’s witness did not supervise the investigation and testified only that informing claimant that she would be terminated would not have been “within the scope” of the investigator’s engagement with the employer. Transcript at 27–28. The employer’s witness did not actually rebut or deny that the investigator had made such statements to claimant. The testimony of the employer’s witness was therefore not sufficient to overcome claimant’s firsthand account of what the investigator told her, and the weight of the evidence supports claimant’s testimony regarding what the investigator told her and why she quit.

² Similarly, the order under review stated that claimant had testified inconsistently about when she retained her lawyer and whether she resigned based on her lawyer’s advice rather than because of what she learned from the investigator. Order No. 21-UI-167895 at 6. However, a careful review of the record confirms that claimant testified consistently about when she retained her lawyer but that the ALJ misunderstood a reference claimant made to the investigator, who happened to also be a lawyer, and mistakenly thought claimant was referring to her own lawyer in that context. May 25, 2021 Audio Record at 37:50. Claimant did not testify that she resigned based on her lawyer’s advice.

Claimant quit work with good cause. Claimant faced a grave situation because based on the information she received from the investigator and the HR representative, claimant reasonably believed that her termination was imminent upon her return from leave, and that the employer would disclose the fact she was terminated to prospective employers, which would hinder her ability to find new employment after the employer terminated her. *See McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects). The record shows that at the time claimant gave notice of her intent to resign, the employer had not decided whether to terminate claimant when she returned from leave. However, given that the investigator was leading an investigation that could have resulted in claimant’s termination, a reasonable and prudent person in claimant’s position would believe, based on the investigator’s representations to claimant, which were not refuted by the employer’s HR office, that termination was imminent and inevitable following the end of claimant’s leave. Because of this reasonable perception that termination was inevitable, returning to work would have been futile and did not constitute a reasonable alternative to claimant leaving work when she did. Considering the harm to claimant’s future job prospects if she was terminated and had that fact become part of her permanent employee file, the record indicates, more likely than not, that no reasonable and prudent person in claimant’s situation would have continued to work for the employer for an additional period of time.

Claimant therefore voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Order No. 21-UI-167895 is modified, as outlined above.

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

DATE of Service: July 16, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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