

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0490

Affirmed ~ Late Request for Hearing Allowed
Reversed ~ No Disqualification

PROCEDURAL HISTORY: On November 9, 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 unemployment insurance benefits effective February 9, 2020 (decision # 104058). On November 11, 2020, claimant filed a request for hearing which the Department did not recognize as having been received. On November 30, 2020, decision # 104058 became final. On February 3, 2021, claimant filed a second, late request for hearing. ALJ Kangas reviewed claimant's request, and on February 25, 2021, issued Order No. 21-UI-161597, dismissing claimant's February 3, 2021 request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 11, 2021. On March 4, 2021, claimant filed a timely response to the appellant questionnaire.

On May 10, 2021, the Office of Administrative Hearings (OAH) served a notice canceling Order No. 21-UI-161597. Also on May 10, 2021, OAH served notice of a hearing scheduled for May 27, 2021 to consider claimant's late request for hearing and, if allowed, the merits of decision # 104058. On May 27, 2021, ALJ Hoppe conducted a hearing, at which the employer failed to appear, and on June 7, 2021 issued Order No. 21-UI-168227, concluding that claimant's request for hearing on November 11, 2020 was timely, and affirming decision # 104058. On June 15, 2021, claimant filed an application for review of 21-UI-168227 with the Employment Appeals Board (EAB).

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's request for hearing on decision # 104058 was timely filed is **adopted**. The remainder of this decision addresses whether claimant quit work with good cause.

FINDINGS OF FACT: (1) Little Lois Café employed claimant as a delivery driver until February 12, 2020.

(2) On February 12, 2020, claimant was delivering food when her navigation app stopped working. Claimant did not know how to reach her delivery stops without using her app and called the employer's

owner for assistance. The owner gave claimant directions for each delivery, which made the owner “very angry.” Transcript at 12. Over the course of the day, the owner “belittled and talked down” to claimant and yelled at her “over and over” for having to give claimant directions. Transcript at 12, 13. This treatment made claimant “very shaken up and upset.” Transcript at 13.

(3) The owner “ha[d] a history of” treating his employees in the same manner he had treated claimant and claimant was aware of other employees whom the owner had “come down on . . . pretty hard.” Transcript at 14, 17. Claimant decided to voluntarily quit to avoid another bad experience with the owner. On February 12, 2020, claimant informed the owner via text message that she was quitting work effective immediately.

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 quit work without good cause. Order No. 21-UI-168227 at 3. The record does not support this conclusion.

Claimant quit work with good cause. Her situation was grave; on the day claimant quit work, the owner subjected her to repeated verbal abuse that involved “belittl[ing]” claimant and yelling at her “over and over” throughout the course of the day as the owner gave claimant directions for each of her deliveries. Transcript at 12, 13. Based on the owner’s “history” of treating his employees in the same manner he had treated claimant, claimant had a reasonable basis to conclude that the owner would repeat his behavior and subject her to additional abuse in the future. Transcript at 17. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work under those circumstances. Claimant had no reasonable alternative to leaving work when she did. The record does not show that there was anyone claimant could have approached to request that the owner’s conduct be addressed. Had claimant requested and been granted a leave or time off from work, more likely than not, she would have had to continue to work with the owner upon her return to work. Thus, the record supports that under claimant’s circumstances, no reasonable and prudent person 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-168227 is set aside, as outlined above.

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

DATE of Service: July 21, 2021

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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

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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