

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0660

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause, which did not disqualify claimant from receiving unemployment insurance benefits (decision # 145733). The employer filed a timely request for hearing. On July 29, 2021, ALJ Smith conducted a hearing, and on August 6, 2021 issued Order No. 21-UI-172080, reversing decision # 145733 by concluding that claimant quit without good cause and was disqualified from receiving unemployment insurance benefits effective February 28, 2021. On August 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Clatskanie School District employed claimant as the principal of the district's middle-high school from July 1, 2020 to March 3, 2021.

(2) When claimant was hired, she reported directly to the previous principal of the school, who was then working as the district's director of student support and innovation (DSSI). Claimant came to distrust the DSSI because she felt that he had been dishonest with her and others, and claimant generally had difficulties working under him. As a result, in or around October 2020, claimant requested that she instead report directly to the district's superintendent. Claimant's request was granted.

(3) In late February 2021, one of the teachers at claimant's school was granted accommodations under the Americans with Disabilities Act (ADA) due to conditions that rendered her unable to climb the stairs to a classroom on the second floor. Thereafter, claimant was tasked with assigning the teacher a classroom on the first floor. On February 22, 2021, claimant offered the teacher a choice of three different first-floor classrooms, but the teacher did not find them acceptable, and instead requested to be assigned to a room that was then functioning as the staff lounge. Claimant declined to allow the teacher to use the staff lounge as a classroom, as doing so would require the custodial staff to move heavy appliances and furniture upstairs. The teacher subsequently complained about the situation to the DSSI. When claimant learned about this, she confronted the teacher, raising her voice and scolding the teacher

to an extent that the teacher became upset and had a “breakdown.” Exhibit 1 at 2. Multiple employees witnessed the interaction and reported it to the superintendent.

(4) After receiving the reports of the February 22, 2021 incident, the superintendent placed claimant on administrative leave pending an investigation. The superintendent assigned the DSSI to conduct the investigation, which upset claimant because she did not believe that he would be fair in the investigation.

(5) On March 1, 2021, the DSSI completed his investigation of the incident, drafted a report of his findings and recommendations, and submitted it to the superintendent. The report, among other things, suggested that claimant’s actions could create, or might have already created, a hostile work environment. The report also recommended that claimant be permitted to return to work “provided she understands the severity of her actions, owns those actions, and apologizes in writing and in person to [the teacher who had been granted ADA accommodations].” Exhibit 1 at 3. A copy of the report was provided to claimant.

(6) On March 3, 2021, claimant met with the superintendent to discuss the investigation and report. At that time, the superintendent had not yet decided whether she would allow claimant to return to work. However, claimant felt that the investigation had not been conducted fairly, that the report’s findings were inaccurate, and that she could no longer work with the DSSI or the superintendent. Additionally, claimant was concerned that being discharged from the job could significantly impact her future career prospects, and that the DSSI or the superintendent might report claimant to the “TSPC”¹ for a Title IX violation,² potentially putting her license in jeopardy. Transcript at 42. For these reasons, claimant voluntarily quit work that day prior to fully discussing the investigation’s findings with the superintendent.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Claimant voluntarily quit work because she felt she could no longer work with the DSSI and the superintendent, and because she was concerned that her career could be damaged by being discharged from her job, or being reported to the TSPC. To the extent that claimant quit work because she felt that she could no longer work with the district’s leadership, she has not shown that she faced a situation of such gravity that she had no reasonable alternative but to quit. For instance, while claimant testified at

¹ Presumably, the Teacher Standards and Practices Commission. See <https://www.oregon.gov/tspc/Pages/index.aspx>.

² See 20 U.S.C. §§ 1681–1688

hearing that she asked to report directly to the superintendent because the DSSI had not been “telling the truth,” claimant did not offer examples or explanations as to how he had allegedly been untruthful. Transcript at 26. Without specific, corroborating evidence to show that the DSSI acted in ways that were unfair, untruthful, or otherwise unreasonable towards claimant while he acted as her direct supervisor, the record does not support a finding that claimant was unable to continue working for the employer merely because the superintendent assigned the DSSI to conduct the investigation. Further, even if claimant’s concerns about the accuracy of the investigation report were validated, those concerns³—such as whether or not students were in the building at the time of the incident—do not appear to be material to the outcome of the investigation. Exhibit 1 at 2. In sum, to the extent that claimant quit because of her concerns about working with district leadership, she has not shown that she had good cause to do so.

To the extent that claimant quit work because of her concerns about her career prospects were she to be discharged or reported to the TSPC, claimant also has not shown that she faced a grave situation. In some cases, a person who quits to avoid being discharged from a job may face a grave situation. *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); *Dubrow v. Employment Dep’t.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation). Even assuming that being discharged from the job would have been seriously damaging to claimant’s future career prospects, however, the record shows that, more likely than not, the employer did not intend to discharge claimant at the time that she quit. This is supported by the findings of the report, which explicitly recommended that claimant be allowed to return to work, and the superintendent’s testimony that she had not yet determined whether to discharge claimant but did not intend to do so. Transcript at 15, 64–65. Further, even if claimant’s situation was grave, claimant failed to pursue the reasonable alternative of speaking to the superintendent and learning the outcome of the investigation rather than quitting in anticipation of being discharged.

Finally, to the extent that claimant quit to avoid being reported to the TSPC, the record does not show that the employer intended to report claimant for a license action, or that claimant had any factual basis for believing that they might do so. Additionally, claimant has not shown that quitting would have prevented the employer from pursuing such an action, and for that reason has not shown that quitting actually conferred on her a benefit, such as protection of her license. *See Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit from leaving work). Claimant therefore has not shown that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 28, 2021.

DECISION: Order No. 21-UI-172080 is affirmed.

³ Claimant’s concerns about the investigation report are generally outlined as hand-written notes on the investigation report itself. Exhibit 1 at 1–3.

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

DATE of Service: September 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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for weeks ending September 4, 2021 and prior as long as you were not eligible for other benefits during that time, and were unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA was an unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic. The program ended on September 4, 2021.

Visit <https://unemployment.oregon.gov> for more information, or to contact the Oregon Employment Department using the “Contact Us” form. You can also call 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 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 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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