

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0723

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 17, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective November 3, 2019 (decision # 123048). Claimant filed a timely request for hearing. On August 19, 2021, ALJ L. Lee conducted a hearing, and on August 27, 2021 issued Order No. 21-UI-173570, affirming decision # 123048. On September 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Carter Farm, Inc. employed claimant as a foreman for about two years until November 4, 2019.

(2) Claimant was responsible for supervising employees on the employer's hemp farm. Claimant reported directly to the owner of the farm. The owner was aware that some of the workers had criminal records, but did not know whether any of his employees had been imprisoned for violent crimes.

(3) Many of the farm's employees would frequently drink alcohol or smoke cannabis when they were supposed to be working. Although claimant was responsible for supervising the farm's employees, the employer did not give claimant authority to discipline them, other than sending them home for the day. Even this discipline was disfavored because the farm was chronically shorthanded.

(4) On several occasions beginning shortly after he began working for the employer, some of the employees threatened claimant with violence or death when he attempted to discipline them for failing to work as directed. On one occasion, an employee threatened to kill claimant in front of the owner. The owner discharged that employee. However, even though claimant reported other threats against claimant to the owner, the owner took little or no action in response to those threats. None of the employees ever physically assaulted claimant.

(5) At the beginning of his shift on November 4, 2019, claimant relayed the owner's instructions for the day to the employees working at that time. After one of the employees raised a concern about working

conditions, the employees started to threaten that they were “. . . going to kill [claimant] and beat [him] up,” and directed “. . . an endless barrage of threats and insults” at claimant. Transcript at 8. Afterwards, claimant “snapped,” sent the employer a text stating that everyone hated him, and quit effective immediately. Transcript at 27.

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) (December 23, 2018). “[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 on November 4, 2019 when some of the employees he supervised made threats of violence against him. These threats were part of an ongoing pattern of behavior that had persisted for much of claimant’s tenure with the employer. The order under review concluded that claimant quit work without good cause because the threats he was subjected to did not create a grave situation and, even if they did, he quit abruptly without attempting to calm himself or giving the employer an opportunity to respond to the situation, and because he could have continued working for the employer until he found another job that suited him better. Order No. 21-UI-173570 at 3. The record does not support that conclusion.

It is difficult to conceive of a scenario in which regular threats of violence would not constitute a grave situation. The order under review suggested that the situation was not grave because claimant was never actually physically attacked at work. Order No. 21-UI-173570 at 3. Although it is impossible to say whether claimant ever would have been attacked at work had he remained employed, no reasonable and prudent person would have waited for an actual attack prior to quitting under the circumstances. Instead, the record shows that the threats constituted a grave reason for quitting.

Further, while claimant did not seek assistance from the owner after he was threatened on November 4, 2019, the record shows that doing so would have been futile. At hearing, the owner testified that had claimant talked to him before quitting on November 4, 2019, the owner would have “. . . went over and worked it out with them,” and that in response to prior incidents of threatened violence, he had talked to the offending employees and “. . . explain[ed] to them that you couldn’t do that and stuff.” Transcript at 39, 41–42. However, claimant testified that when he had previously told the owner about similar issues, the owner would “just kind of laugh it off” and suggest that claimant could prevail against the offending employees in a fight.

Aside from one instance in which the employer discharged an employee who threatened to kill claimant in front of the owner, the preponderance of the evidence shows that the owner did not take the threats against claimant seriously. Transcript at 8. For example, the owner did not offer evidence that he regularly disciplined employees for threats of violence in the workplace, or that he would have done so

on November 4, 2019 had claimant not quit. Additionally, the owner testified that he did not know whether any of the employees he hired had been convicted of violent offenses, suggesting that he did not actually know whether any of the employees had a history of engaging in violence. Given the above, and the fact that the threats against claimant continued largely unabated for nearly the entire time that claimant worked for the employer, the record supports the conclusion that any additional efforts claimant might have made to convince the employer to intervene would have been futile. Doing so therefore was not a reasonable alternative to quitting. *See Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996).

Finally, the Oregon Court of Appeals has established that continuing to work under grave conditions until other work has been found is not a reasonable alternative to quitting. *See Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep't.*, 256 Or App 682, 303 P3d 957 (2013). As such, claimant's continuing to work for the employer until he found another job was not a reasonable alternative to quitting.

For the above reasons, claimant quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

DECISION: Order No. 21-UI-173570 is set aside, as outlined above.

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

DATE of Service: October 12, 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 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.

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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.

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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