

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0765

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 144340). The employer filed a timely request for hearing. On September 1, 2021, ALJ Mott conducted a hearing, and on September 2, 2021 issued Order No. 21-UI-173879, affirming decision # 144340. On September 22, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Kevin Keithley CPA, PC employed claimant, most recently as a staff accountant, from January 2017 until June 9, 2021.

(2) Claimant suffered from depression and anxiety. The conditions were first diagnosed when claimant was a child, persisted into adulthood, and continued during her employment for the employer. Claimant saw a therapist to address the conditions.

(3) In the spring of 2021, the employer required claimant to work long hours because it was tax season. During this period, claimant believed the employer began treating her in a hostile manner by placing papers on her desk in a curt fashion and failing to acknowledge her when she turned in her timesheet. The circumstances at claimant's workplace caused claimant "constant" anxiety, which prevented her from eating or sleeping properly. Transcript at 14.

(4) In April 2021, claimant requested that the employer give her a day off from work each week, which the employer granted. Claimant's anxiety and difficulty eating and sleeping persisted despite receiving the day off work each week.

(5) Claimant asked her therapist for advice about how to cope with her anxiety. The therapist advised claimant to get a psychiatric service animal and take the animal to work to help address her anxiety. In late May 2021, claimant got a dog and brought it with her to work. Although claimant produced a document to the employer provided by her therapist that claimant believed authorized her to bring the dog to work, the employer informed claimant that the dog was not allowed. The employer told claimant that animals were not permitted under the employer's lease and that the employer believed that they were not required by law to allow claimant to have the dog at work. Claimant took the dog home and did not attempt to bring it with her to work again.

(6) Claimant's anxiety and difficulty eating and sleeping persisted after she was informed she could not bring her dog to work. Claimant requested and was granted a meeting on June 9, 2021 to discuss her concerns with the employer. During the June 9, 2021 meeting, claimant mentioned her view that the employer treated her poorly. The employer responded that they believed claimant was the cause of any workplace hostility. Claimant considered the employer's response to be unprofessional and decided she "needed to get [her]self out of there, for [her] mental health[.]" Transcript at 6.

(7) Claimant then concluded the meeting and, moments later, gave the employer a letter of resignation. Claimant's resignation letter advised of her intent to leave work effective June 22, 2021 and to work through the notice period. Upon receiving the resignation letter, the employer told claimant that working until June 22, 2021 "wasn't required." Transcript at 27. The employer stated they would give claimant "her final paycheck that day, if she could pack up her personal belongings and she did not need to work for [the employer] for those two weeks." Audio Record at 41:29. Claimant then received payment for the two weeks following June 9, 2021, left the employer's office, and never worked there again.

(8) If claimant had insisted on working the two weeks following June 9, 2021, the employer would not have allowed her to do so because the employer believed claimant "had a totally negative attitude." Transcript at 28.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

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 discharged claimant on June 9, 2021. On that date, claimant gave the employer notice that she planned to quit work on June 22, 2021. However, the employer did not allow claimant to work through her notice period, informing her that working through June 22, 2021 "wasn't required" and that the employer would pay her but "she did not need to work . . . for those two weeks." Audio Record at 41:29. Further, had claimant insisted on working the two weeks following June 9, 2021 as indicated in her letter, the employer would not have allowed her to do so because they believed claimant "had a totally negative attitude." Transcript at 28. Because claimant was willing to continue working for the employer until June 22, 2021, but was not allowed to do so by the employer, the work separation was a discharge that occurred on June 9, 2021.

Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. “As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.” OAR 471-030-0038(3)(a). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant on June 9, 2021 after informing claimant that working through June 22, 2021 “wasn’t required” and that the employer would pay her but “she did not need to work . . . for those two weeks.” Audio Record at 41:29. The record shows that the employer was unwilling to allow claimant to continue working after June 9, 2021 because they viewed her as having a negative attitude. However, the employer did not establish that the attitude claimant displayed at the time she conveyed her resignation letter amounted to a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her or a disregard of the employer’s interests. There is no indication from the record that claimant violated any employer expectation at the time she tendered her resignation letter. Claimant’s discharge therefore was not for misconduct under ORS 657.176(2)(a).

ORS 657.176(8). While the record shows that claimant was not discharged for misconduct, it is necessary to determine whether ORS 657.176(8) applies to this case. ORS 657.176(8) states, “For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.”

Here, claimant notified the employer that she would quit work on June 22, 2021. The employer discharged claimant, but not for misconduct, on June 9, 2021, which was within 15 days of claimant’s planned quit on June 22, 2021. Therefore, the applicability of ORS 657.176(8) turns on whether claimant’s planned quit on June 22, 2021 was without good cause. “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). “[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). Claimant had depression and anxiety, which constitute permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant’s quit planned on June 22, 2021 was for reasons that constitute good cause. Claimant’s situation was grave because the circumstances at claimant’s workplace caused claimant “constant” anxiety, which prevented her from eating or sleeping properly. Transcript at 14. Claimant also pursued

reasonable alternatives to quitting to no avail. For example, claimant requested and was granted a day off each week but her anxiety and difficulty eating and sleeping persisted. Claimant also sought to improve her anxiety by, on the advice of her therapist, bringing her dog to work. However, the employer told claimant her dog was not allowed because animals were not permitted under the employer's lease, and the employer believed that they were not required by law to allow claimant to have the dog at work. Claimant therefore established that her planned quit on June 22, 2021 was with good cause because the record shows that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's anxiety and depression would have continued to work for the employer for an additional period of time.

Thus, because the employer discharged claimant, but not for misconduct, within 15 days prior to the date she planned to voluntarily leave work with good cause, ORS 657.176(8) does not apply to this case. Instead, this case is governed by ORS 657.176(2)(a) and, as discussed above, the record does not show that claimant's discharge was for misconduct under that provision. As such, claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-173879 is affirmed.

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

DATE of Service: October 28, 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 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 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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