

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0792

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 20, 2021, 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 February 14, 2021 (decision # 65649). Claimant filed a timely request for hearing. On September 22, 2021, ALJ Lucas conducted a hearing, and on September 24, 2021 issued Order No. 21-UI-175613, affirming decision # 65649. On September 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Huttig, Inc. employed claimant as an overnight load builder and forklift operator from November 12, 2020 to February 15, 2021. Claimant informed the employer during his job interview that he suffered from anxiety and light sensitivity.

(2) The employer had a policy in effect that prohibited harassment between employees.

(3) Prior to early February 2021, claimant had trouble with his night supervisor. The night supervisor was frequently "short" with claimant, and would yell at him and call him foul names. Transcript at 5. The night supervisor would also stand over claimant during paperwork time, which would aggravate claimant's anxiety issues, and he would frequently shine his spotlight in the claimant's face, despite claimant's sensitivity to light. Claimant believed that the night supervisor purposefully committed these acts because claimant had notified the employer of his anxiety and light sensitivity at his interview. Claimant eventually spoke with the operations manager, who supervised the night supervisor, about the night supervisor being "short" with claimant and their inability to see "eye-to-eye." Transcript at 24–25.

Claimant did not mention the name-calling or the light-shining issue to the operations manager when he spoke to him.

(4) In early February 2021, the operations manager spoke to the night supervisor about his treatment of claimant. The night supervisor told the operations manager he had been “frustrated” with claimant because he was not properly “wrapping pallets” and that he “was messing up on his paperwork.” Transcript at 26. The operations manager instructed the night supervisor to be patient with claimant regarding the paperwork because it takes some employees longer than others to complete the paperwork properly.

(5) Between February 11, 2021 and February 15, 2021, claimant exchanged text messages with the operations manager. During the exchange, claimant told the operations manager he could no longer work with the night supervisor due to the night supervisor’s “disrespect,” and disregard of claimant’s light sensitivity. Transcript at 22. The operations manager responded, “[the night supervisor] is my night lead,” and claimant replied, “I get that man. He has some issues, though, bro.” Transcript at 22. When the operations manager asked claimant to confirm he was quitting, claimant reiterated that he could no longer work with the night supervisor. Had claimant told the operations manager about the name-calling and the light-shining prior to quitting, the operations manager would have confronted the night supervisor about the alleged harassment and, and considered disciplinary action against the night supervisor.

CONCLUSIONS AND REASONS: Claimant 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). Claimant had anxiety, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h).¹ 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.

The record shows that during his employment, claimant and the night supervisor did not get along and that in addition to being short with claimant, the night supervisor would harass claimant by calling claimant names and shining bright lights in claimant’s eyes. These harassing behaviors exacerbated claimant’s anxiety and likely created a grave situation for claimant. However, in addition to showing that claimant faced a grave situation at work, OAR 471-030-0038(4) requires claimant to also show that he had no reasonable alternatives to quitting. The preponderance of the evidence shows that claimant had previously addressed with the operations manager his concerns about the night supervisor’s “short”

¹ The preponderance of the evidence, including claimant placing the employer on notice about his anxiety condition at the time he was hired, and claimant’s testimony that he has upcoming medical appointment to address his anxiety issue, supports a determination that claimant’s anxiety was a permanent or long term physical or mental impairment. Transcript at 18.

demeanor, and the operations manager responded by addressing the issue with the night supervisor and instructing him to be patient with claimant.

However, the evidence differed as to whether, in addition to approaching the operations manager about the night supervisor's short demeanor, claimant also approached the operations manager to complain about the night supervisor's name-calling and light shining harassment. Claimant testified that to the "[b]est of his knowledge" he told the operations manager on three to five different occasions about the night supervisor's harassment, but was unable to recall the "[w]ord for word" nature of those conversations. Transcript at 8, 9. The operations manager testified that claimant never told him about the name-calling or light shining harassment prior to the February 11-15 text exchange, and that he was otherwise unaware that the harassment had occurred. Transcript at 23-24, 27, 30. Where, as here, the evidence in the record is no more than equally balanced, the party with the burden of persuasion - here, claimant - fails to meet their evidentiary burden. *State v. James*, 339 Or 476, 123 P3d 251, 255-256 (2005).

Claimant therefore failed to meet his evidentiary burden to show that he pursued the reasonable alternative of complaining to the operations manager about the night supervisor's name-calling and light shining harassment prior to quitting. In light of this conclusion, and given that the operations manager also testified that had claimant made him aware of the night supervisor's harassment, he would have addressed the situation with the night supervisor, claimant has failed to meet his burden to show that he had no reasonable alternative but to quit work. Transcript at 27-28.

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-175613 is affirmed.

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

DATE of Service: November 4, 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

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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