

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0797

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 4, 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 July 11, 2021 (decision # 110847). Claimant filed a timely request for hearing. On September 15, 2021, ALJ Kaneshiro conducted a hearing, and on September 16, 2021 issued Order No. 21-UI-174924, affirming decision # 110847. On October 1, 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) Pacificorp employed claimant as a senior engineer from November 1, 2018 to July 15, 2021.

(2) On June 9, 2021, the employer had a distribution system planning (DSP) meeting which claimant attended. During the meeting, claimant perceived that certain ethics violations based on fraud occurred that violated the employer's code of business conduct. On June 10, 2021, claimant contacted the employer's human resources section to complain about the perceived ethics violations.

(3) On June 14, 2021, prior to the human resources section having a chance to investigate claimant's ethics violation complaint, claimant filed a complaint directed at the same issue with the employer's ethics hotline. The employer investigated claimant's ethics complaint and found no wrongdoing.

(4) Between June 18, 2021 and June 24, 2021, the employer conducted two separate meetings with claimant to discuss the purpose behind the employer's DSP meetings and claimant's role as an agent of

the employer when attending those meetings. In particular, the employer told claimant his primary role at the DSP meetings was to be a subject-matter expert for the employer and to listen.

(5) On July 14, 2021, claimant participated in a virtual DSP meeting on behalf of the employer with other utilities and “stakeholder[s]” of the employer. Transcript at 12. At the conclusion of one company’s presentation, claimant asked the entire group of attendees what that company’s presentation had to do with distribution system planning because “[i]f a person wants solar power, I don’t see why it matters what race or sexual orientation they are.” Transcript at 44. Claimant immediately received text messages from two coworkers who objected to claimant’s question and the manner in which he stated it. Claimant also received a telephone call from a third coworker who told claimant that some of the stakeholders at the meeting had contacted the third coworker to ask if claimant could take his questions offline. All three coworkers told claimant to stop asking questions during the DSP meeting and claimant did so. Claimant emailed his manager because he believed his coworkers’ request that he stop asking questions was “bizarre” and “inappropriate.” Transcript at 10. Claimant’s manager responded by telling claimant that he needed to remember that when he spoke, he was speaking on behalf of the company and needed to be cognizant of how other attendees may have received his comments.

(6) On July 15, 2021, the employer informed claimant that they were suspending him for two weeks because he violated the employer’s code of business conduct by being insubordinate during the July 14, 2021 DSP meeting and due to the employer’s ongoing concerns about claimant’s ability to meet their expectations during DSP meetings. Because claimant believed the suspension was retaliation for his prior ethics hotline complaint, he responded to the suspension notification by resigning. Claimant did not report his concern about retaliation on the employer’s ethics hotline or to upper management. The employer accepted claimant’s resignation, effective immediately.

CONCLUSIONS AND REASONS: Claimant voluntarily quit working for the employer 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 failed to show that he had good cause to quit work. The record shows that claimant quit work because he believed the employer’s two-week suspension on July 15, 2021 was in retaliation for claimant’s earlier ethics hotline complaint. However, the preponderance of the evidence shows that the employer suspended claimant on July 15, 2021 because of claimant’s actions during the July 14, 2021 DSP meeting, during which asked a question to the group in attendance, which included the employer’s key stakeholders, that the employer deemed inappropriate and against their interests. As such, the preponderance of the evidence shows that the proximate cause of claimant’s suspension was the employer’s determination that he had been insubordinate during the July 14 meeting and not an attempt

to retaliate against claimant. Because claimant's conduct at the July 14, 2021 meeting was the proximate cause of his suspension, and because his suspension was not retaliation on the part of the employer, claimant failed to show that he faced a grave situation at work such that no reasonable and prudent person in claimant's position would have continued to work for the employer.

Furthermore, even assuming that the employer did suspend claimant as retaliation for his prior complaints about the employer's ethics and that he therefore faced a grave situation, claimant failed to pursue reasonable alternatives that were available to him prior to his decision to quit. Among other options, claimant could have pursued another complaint to the ethics hotline alleging the retaliation. Further, because the record shows that the employer, as per their policy, immediately investigated claimant's first ethics hotline complaint, a second ethics complaint alleging retaliation was a reasonable alternative to quitting. Likewise, the record shows that claimant had the reasonable alternative to approach upper management with his claim of retaliation prior to quitting his employment. Because the preponderance of the evidence shows that claimant had reasonable alternatives to quitting work when he did, claimant failed to demonstrate that he quit work with good cause. Claimant is disqualified from receiving unemployment insurance benefits effective July 11, 2021 based on his work separation.

DECISION: Order No. 21-UI-174924 is affirmed.

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

DATE of Service: November 8, 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 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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