

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0818

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged not for misconduct within fifteen days of claimant's planned quit without good cause, and was disqualified from receiving unemployment insurance benefits effective July 4, 2021 (decision # 80933). Claimant filed a timely request for hearing. On September 28, 2021, ALJ Wardlow conducted a hearing, at which the employer did not appear, and on September 29, 2021 issued Order No. 21-UI-175937, affirming decision # 80933. On October 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Douglass County Council on ADAPT employed claimant as an intake coordinator from March 1, 2014 to July 1, 2021.

(2) Claimant had been diagnosed with depression and anxiety and the employer was aware of her medical conditions. Because claimant's medical conditions had remained stable for several years, she had discontinued the regular use of her prescribed anxiety medications, but maintained a small "emergency" amount in case of a sudden panic attack. Transcript at 14.

(3) On or about March 9, 2021, while claimant was on leave for a surgical procedure, claimant's supervisor texted claimant to express her "disappointment" that claimant had not completed certain tasks regarding a new system the employer was implementing. Transcript at 9-10. Prior to going on medical leave, claimant had emailed her supervisor that she had completed the tasks, but had received no

response. Due to her supervisor's text message, claimant cut short her medical leave and returned to work the day after her March 9, 2021 surgery to show the supervisor that she had completed the tasks.

(4) On or about March 16, 2021, claimant took leave because her two-year old daughter required emergency surgery. Prior to going on leave, claimant arranged for training for the employer's staff related to the new system and relayed the training schedule information to necessary employees. Due to a scheduling error by the employer's IT department, the training did not occur. Although claimant possessed an email from the IT department apologizing for the scheduling error, when claimant returned to work, claimant's supervisor told claimant she was disappointed in her because of claimant's lack of organization.

(5) On March 23, 2021, claimant had a conversation with her supervisor to address a lack of coverage for claimant in the workplace that had prevented her from taking her lunch and other required breaks. Claimant's supervisor apologized to claimant.

(6) On April 8, 2021, claimant's supervisor sent an email to claimant, the chief human resources (HR) officer, and M.W. (the supervisor of claimant's supervisor). Claimant's supervisor expressed in the email her disappointment in claimant because claimant was responsible for ensuring her own coverage and because claimant had not communicated any need for coverage. After receiving this email, claimant was "extremely upset" and went to HR because the supervisor had previously told claimant that the supervisor would handle the arrangement of coverage. Transcript at 13. HR told claimant they would set up a meeting to address her concerns.

(7) On May 13, 2021, an HR meeting occurred that included claimant, the chief HR officer, and M.W. During the meeting, claimant expressed how her supervisor's treatment of her had left her feeling "vulnerable" and in a "dark place." Transcript at 17. M.W. reacted to claimant by rolling her eyes before stating, "You know, you act like [your supervisor] threw a book at you." Audio Record at 31:31. M.W.'s comment and eye-roll made claimant feel that the employer was not willing to resolve her concerns. The employer offered to "immediate[ly]" transfer claimant to a new position with a different supervisor and claimant accepted. Transcript at 25.

(8) On or about May 18, 2021, the employer sent an email to staff that announced the employer had an urgent need to fill claimant's position. The email did not state that the employer was transferring claimant to another position, and this omission caused claimant's coworkers to ask claimant why the employer had demoted her. Claimant asked the employer when her job transfer would occur and the employer told her it would occur after they found her replacement and the replacement was trained.

(9) Between May 18, 2021 and June 24, 2021, claimant continued to receive questions from coworkers related to the May 18, 2021 email. Claimant's supervisor also continued to talk down to her and ignore her. The employer hired a replacement for claimant, and claimant trained the replacement for several weeks, but claimant's job transfer did not occur.

(10) Claimant decided that she needed to try to find another job. Claimant based her decision on the health-related toll the situation with her supervisor had taken upon her, including panic attacks, the need to restart her anxiety medication, and her doctor's advice that she should find a new job based on her high blood pressure and migraines that were work related. Claimant was also concerned because her

work situation had caused her to not be “the mom that [she] used to be” and had almost caused her a divorce. Transcript at 21.

(11) On June 24, 2021, another employer offered claimant a new work opportunity. The offer of other work paid less than claimant’s unemployment insurance weekly benefit amount and less than the pay claimant received as an intake coordinator with the employer. Claimant accepted the offer of other work.

(12) On June 25, 2021, claimant gave the employer notice that her last day of work would be July 9, 2021. Claimant would have given the employer notice of her intent to quit on June 25, 2021, even without the offer of work she received, and accepted, on June 24, 2021 because of the health and family issues her supervisor was causing her.

(13) On July 1, 2021, the employer discharged claimant. The employer told claimant that they had decided to discharge her because it would be better for her and her mental health and that, notwithstanding the July 1, 2021 discharge, they were still going to pay her through the July 9, 2021 notice date she had provided.

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

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) (September 22, 2020). “[W]antonly negligent’ means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.” OAR 471-030-0038(1)(c). 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).

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). “[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). 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. OAR 471-030-0038(5)(a) provides, in pertinent part, that an individual has “good cause” for leaving work to accept an offer of other work as long as the other work pays an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left.

However, ORS 657.176(8) provides that when an individual has notified an employer that they will quit work on a specific date, and the employer discharges the individual, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred. The individual is disqualified from receiving benefits, except that the individual is 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 quit date. ORS 657.176(8).

The order under review concluded that claimant quit work without good cause, and that the employer discharged claimant not for misconduct within fifteen days prior to claimant's planned quit. Order No. 21-UI-175937 at 2-5. Because the order concluded that the employer discharged claimant not for misconduct within fifteen days of claimant's planned quit without good cause, the order applied ORS 657.176(8). Order No. 21-UI-175937 at 2-5. The record supports the conclusion of the order under review that the employer discharged claimant not for misconduct.

On June 25, 2021, claimant notified the employer that she planned to quit work effective July 9, 2021. However, the employer discharged claimant on July 1, 2021 because the employer believed doing so would be better for claimant and her mental health. The record therefore does not show that the employer discharged claimant because she had engaged in conduct the employer considered 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. As such, the employer discharged claimant, not for misconduct, on July 1, 2021. The remaining issue to be determined is whether ORS 657.176(8) applies to this case based on whether claimant's planned quit would have been without good cause.

The order under review concluded that claimant would not have given notice to leave employment on June 25, 2021, if she had not received an offer of other work on June 24, 2021, and claimant's July 9, 2021 planned quit was therefore without good cause because claimant's offer of new employment paid less than her weekly benefit amount and less than her job with the employer. Order No. 21-UI-175937 at 3-4. While the order under review was correct to the extent it concluded that claimant's offer of new work would not have constituted good cause to quit because the new work paid less than her current employment and her weekly benefit amount, the record does not support the order under review to the extent it concluded that the reason for claimant's planned quit was the offer of new work.

The record shows that claimant was the subject of a pattern of abusive behavior at her workplace from her supervisor that exacerbated her mental health-related conditions and caused her adverse health and family-related consequences. This abusive behavior was the primary reason for claimant's planned quit and it constituted good cause. Claimant credibly testified that even had she not received the June 24, 2021 offer of new work, she still would have given the employer notice of her intent to quit because her supervisor's treatment had caused claimant too many issues at home and she and her husband had determined that they were better off "figuring out" the financial impact from claimant's lack of a job, then claimant continuing to work for the employer. Transcript at 21. Under the totality of these circumstances, the record shows that claimant's reason for giving the employer notice of her planned quit was due to the mental health and family-related consequences she was suffering since March 2021.

Claimant suffered significant mental health and family-related consequences due to the continuing pattern of abuse from her supervisor, such that no reasonable and prudent person who suffered from

anxiety would have continued to work for the employer for an additional period of time. Beginning around March 9, 2021, claimant's supervisor began engaging in a pattern of conduct toward claimant that included repeated instances of expressing their "disappointment" at claimant's failure to complete tasks and be organized under circumstances where the record shows that claimant had completed the tasks and was organized. Furthermore, the record shows that claimant suffered multiple mental health-related consequences from her supervisor's conduct that left her in a "very dark place mentally." Transcript at 13. These consequences included the deterioration of her previously controlled anxiety condition, panic attacks, and a breakdown in her relationship with family members. Accordingly, claimant faced a grave situation.

Likewise, claimant had no reasonable alternative to quitting work inasmuch as the record shows that the "immediate" job transfer the employer had promised her on May 13, 2021, had not occurred as of her June 25, 2021 quit notice date. The record supports the conclusion that claimant's deteriorating mental health condition did not allow her to wait any longer for the promised job transfer and no reasonable and prudent person suffering from anxiety would have done so in claimant's situation. Moreover, the record shows that even in making the offer to transfer claimant, claimant's complaints about her supervisor were met with an eye-roll by one of the meeting participants and the dismissive response to claimant that "[claimant] act[ed] like [the supervisor] threw a book at [her]." Audio Record at 31:31. Claimant credibly testified that these comments made her feel that the employer was not willing to resolve her concerns about the supervisor, and the record evidence supports her belief given that the employer failed to transfer claimant to a new position despite telling her they would. Transcript at 17. For these reasons, the record shows that claimant's planned quit on July 9, 2021 were for reasons that constituted good cause.

In sum, claimant notified the employer of her intention to quit work with good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Thus, ORS 657.176(8) does not apply to this case. Accordingly, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-175937 is set aside, as outlined above.

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

DATE of Service: November 12, 2021

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.

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

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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
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