

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0919

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 30, 2021 (decision # 73003). Claimant filed a timely request for hearing. On October 13, 2021, ALJ Ramey conducted a hearing at which the employer failed to appear, and on October 15, 2021 issued Order No. 21-UI-177316, affirming decision # 73003. On November 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his 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 him 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) Lam Research Corporation employed claimant, most recently as a program manager, from November 19, 2000 until June 4, 2021.

(2) Around late 2019 or early 2020, claimant was assigned to a new manager. Claimant and some of his team members had a difficult time working with the new manager. In one instance around January 2020, claimant's manager "started using the 'f' word repeatedly" while addressing claimant. Transcript at 11. Claimant and his colleagues later complained to the senior director about the manager's behavior, and the manager's behavior improved thereafter.

(3) In late 2020, claimant developed medical conditions that required him to take a leave of absence for about two months, from January 2021 through March 2021.

(4) When claimant returned from his leave of absence, claimant's manager raised concerns about claimant's performance. This caused claimant to experience stress and difficulty sleeping, and his familial relationships were affected as a result.

(5) On or around May 20, 2021, claimant's manager met with claimant and a human resources representative in order to present claimant with a performance improvement plan ("PIP"). The manager told claimant that he had to either agree to the terms of the PIP or else resign his position. The PIP included multiple areas of improvement and gave claimant only a short period of time to make the indicated improvements. Claimant did not agree with the manager's assessment of his performance and believed that they were "made up" by the manager. Exhibit 1 at 1. Claimant also believed that the employer would discharge him "within weeks" if he did not make the improvements. Exhibit 1 at 1. The employer gave claimant a week to agree to the terms of the PIP, and told him that if he did not do so they would consider him to have resigned. In response, claimant sent an email "in great detail" to "upper management (which included VPs and other senior directors, [claimant's] coworkers, and HR)" explaining why he felt the PIP was wrong. Exhibit 1 at 1.

(6) On May 25, 2021, claimant decided not to agree to the terms of the PIP, and notified the employer that he intended to resign effective June 4, 2021. Claimant was concerned that it would be more difficult for him to find a job if he continued working until the employer discharged him. If not for the short timeline mandated by the PIP, claimant would have instead attempted to transfer to another position in the company, but he did not believe that he had sufficient time to find another position.

(7) On June 4, 2021, claimant voluntarily quit work due to his difficult relationship with his manager, the effects the stress of that relationship had on claimant, and claimant's concerns that he would be discharged in short order if he did not resign.

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) (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.

The order under review concluded that claimant voluntarily quit work "because of his manager's conduct and the impact of that conduct on his health," and that claimant's reason for quitting did not amount to good cause because he did not pursue reasonable alternatives, such as discussing the concerns he had with the senior director or transferring to another position, prior to quitting. Order No. 21-UI-177316 at 2-3. The record does not support this conclusion.

As a preliminary matter, while the record does show that claimant was concerned about the effects that the stress of his interactions with his manager was having on him, it does not show that the concern was

the primary reason that he quit on June 4, 2021. Rather, the record shows that claimant quit at that point in time because he was faced with either accepting the terms of a PIP that he believed to be unachievable and being discharged shortly thereafter, or else resigning to avoid being discharged. Claimant chose the latter for a reason of such gravity that he had no reasonable alternative but to quit.

Because the employer did not appear for the hearing, claimant's assertions that the performance concerns raised in the PIP were "made up" and also generally unachievable within the given timeframe are uncontested. Therefore, it is reasonable to conclude that claimant's beliefs about the PIP, as well the likely consequence of his failing to meet the terms of the PIP within the given timeframe, were well-founded. A reasonable and prudent person who found themselves in such circumstances—required to either meet an impossible standard of performance and then be discharged for failing to meet it, or else resign—would have resigned. This is particularly true in light of claimant's testimony that he believed it would be more difficult to find another job if he was discharged. Transcript at 25. *See McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects); *Dubrow v. Employment Dep't.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Further, the record shows that claimant had no reasonable alternative but to quit. While the order under review reasoned that claimant could have spoken to the senior director to try to address the situation, claimant asserted that he had sent concerns about the PIP to "upper management," but the record does not show that claimant received a response to his expressed concerns. Therefore, it is reasonable to conclude from the record that any further attempt on claimant's part to resolve the situation with upper management would have been futile, and as a result would not have been a reasonable alternative. *See Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996) (Alternatives may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them). Similarly, while the order under review reasoned that claimant could have sought a transfer to another position within the company instead of quitting, claimant's evidence that he did not have sufficient time to find another position before either quitting or being discharged is uncontroverted. Attempting to find another position when there was insufficient time to do so before an inevitable discharge would also have been futile, and as such would not have been a reasonable alternative to quitting. Therefore, the record shows that claimant had no reasonable alternative but to quit.

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

DECISION: Order No. 21-UI-177316 is set aside, as outlined above.

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

DATE of Service: December 7, 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 الاستئناف 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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