

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0986

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 4, 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 July 19, 2020 (decision # 111211). Claimant filed a timely request for hearing. On November 3, 2021, ALJ Ramey conducted a hearing, and on November 10, 2021 issued Order No. 21-UI-179444, affirming decision # 111211. On November 20, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Eclblend, LLC employed claimant from March 12, 2020 through July 21, 2020.

(2) Claimant was diagnosed with Attention Deficit and Hyperactivity Disorder (ADHD) when he was about 12 years old.

(3) For about five years before he worked for the employer, claimant was incarcerated. Claimant was released on parole, and began working for the employer shortly thereafter. Claimant's parole was conditioned on his remaining employed.

(4) Prior to working for the employer, claimant had suffered from substance-abuse issues. Claimant was sober and in substance-abuse recovery when he began working for the employer.

(5) Throughout the duration of his employment, one of claimant's coworkers regularly sexually harassed claimant by calling him names such as "honey," "sweetheart," and "cupcake." Transcript at 6. On multiple occasions, claimant attempted to address the issue with his direct supervisor, the facility manager, and the coworker who had been harassing him, but the harassment continued. The employer did not have a position for claimant that would allow him to avoid interacting with the coworker who had been harassing him.

(6) During his employment, claimant witnessed multiple instances where his coworkers consumed drugs or alcohol at work. Claimant spoke to his direct supervisor and the facility manager about the issue multiple times, but the issue continued.

(7) The continuing sexual harassment and drug use caused claimant to be “completely stressed out,” which negatively affected his mental health and his marriage. Transcript at 19–20. Due to his experiences in prison, claimant felt “triggered” by the sexual harassment and that he needed to keep his guard up at all times. Transcript at 15.

(8) On July 20, 2020, claimant made a mistake in his work, and in response a coworker “started screaming at” claimant and “said he was going to assault” claimant. Transcript at 9. During the ten-minute incident, the coworker called claimant “a punk, a bitch, and a faggot.” Transcript at 10. Claimant’s direct supervisor witnessed the incident, and directed claimant and the other employee to speak to the facility manager. The facility manager “had [claimant and the other employee] talk it out,” and then directed the two to return to work. Transcript at 10. By policy, the employer required that incidents such as the one on July 20, 2020 be reported by the facility manager to the human resources department. However, the facility manager did not report the July 20, 2020 incident to the human resources department.

(9) On July 21, 2021, claimant voluntarily quit working for the employer as a result of the incident with his coworker from the previous day, the sexual harassment he experienced, the drug use he witnessed, and the effects these issues had on his mental health.

(10) Prior to quitting, claimant did not attempt to address any of the issues he had at work with the employer’s human resources department, upper management, or the Bureau of Labor and Industries (BOLI). Claimant was not aware that the employer had a human resources department he could speak to, and was not familiar with BOLI. Claimant’s direct supervisor had previously told him not to “step over people” but to bring issues directly to the supervisor, and had threatened to cut claimant’s hours if he “went above his head” to speak to the facility manager. Transcript at 43.

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). Claimant had ADHD, 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.

Claimant voluntarily quit work due to the negative impact on his health from having experienced a threat of violence, exposure to drug use, and repeated sexual harassment at the employer’s facility. The

order under review concluded that this did not constitute good cause for quitting because claimant had “several reasonable alternatives” available to him, such as: speaking to the facility manager “one last time;” threatening to quit and allowing the employer to respond to his concerns; speaking to someone in human resources; taking a leave of absence to address his health issues; or pursuing legal recourse against the employer, either via a complaint to BOLI or otherwise. Order No. 21-UI-179444 at 3. The record does not support the conclusion that any of these options constituted reasonable alternatives to quitting.

As a preliminary matter, the record shows that the working conditions to which claimant was exposed constituted grave reasons for quitting. Continuing to work for the employer would likely have subjected claimant to additional sexual harassment, a potential for physical assault, a risk that claimant might have relapsed into addiction,¹ and a continuation or exacerbation of the stress that was affecting claimant’s mental health. Faced with such consequences, a reasonable and prudent person with the characteristics and qualities of an individual with ADHD (as well as claimant’s history and other conditions) would not have continued to work for the employer for an additional period of time.

Further, the record shows that claimant had no reasonable alternative but to quit. Claimant attempted to address the sexual harassment and substance-abuse issues with both his direct supervisor and the facility manager on multiple occasions over the course of several months, but the problems were never resolved. Claimant’s direct supervisor also threatened to cut claimant’s hours if he went above the supervisor in trying to address the issue. Additionally, while the employer’s policy required the facility manager to report the July 20, 2020 incident to the human resources department, the record shows that the manager merely talked to claimant and the other employee before sending them back to work. In sum, the evidence suggests that any further attempts on claimant’s part to address the issues with either his supervisor or the facility manager would have been futile. Similarly, while the employer’s witness testified that the issues might have been resolved had claimant spoken to human resources or upper management, claimant was unaware of those options, and had in any case specifically been told by his supervisor not to violate the chain of command. Transcript at 31–32. Where, as here, claimant was unaware of the additional options available to him and believed that the employer’s chain of command prevented him from escalating these matters beyond his direct supervisor, it would have been unreasonable for him to nevertheless attempt to exercise those options.

Further, a leave of absence would not have been a reasonable alternative to quitting because the causes of claimant’s stress were the various problems with his coworkers, rather than an unrelated medical issue that might have resolved with time off from work. The record does not indicate that a temporary leave of absence would have stopped the sexual harassment, substance abuse, or threats of violence. Finally, while a complaint to BOLI might have eventually yielded a resolution, the record suggests that the issues claimant was experiencing would have likely continued until and unless BOLI commenced an enforcement action against the employer. As such, waiting for an eventual legal intervention (from BOLI or otherwise) would not have been a reasonable alternative to quitting. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI); *compare Marian*

¹ Although claimant did not explicitly testify that he was concerned about addiction relapse, his testimony suggested that this was his primary concern with being exposed to drug and alcohol use at work. *See* Transcript at 18–19.

Estates v. Employment Department, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim). Therefore, claimant voluntarily quit work for reasons of such gravity that he 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-179444 is set aside, as outlined above.

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

DATE of Service: December 30, 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

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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