

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1009

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 30, 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 August 29, 2021 (decision # 125539). Claimant filed a timely request for hearing. On November 3, 2021, ALJ Wardlow conducted a hearing, and on November 5, 2021 issued Order No. 21-UI-179097, modifying¹ decision # 125539 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective July 4, 2021. On November 26, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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 the employer's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Inn at Spanish Head employed claimant as their restaurant, lounge, and banquet manager from August 2012 until July 6, 2021. Claimant reported directly to the general manager.

(2) On the evening of May 23, 2021, one of claimant's subordinates "walked off shift" following an "altercation." Transcript at 21. On May 25, 2021, the employer reprimanded claimant in writing in connection with that incident because they felt that claimant "wasn't able to manage her [subordinates]." Transcript at 21.

¹ The order under review stated that "the administrative decision mailed September 30, 2021 is *affirmed*." Order No. 21-UI-179097 at 3 (emphasis added). However, as the order under review concluded that claimant's effective disqualification date was different than the date found in decision # 125539, the order *modified* the administrative decision.

(3) In late May 2021, claimant was diagnosed with anxiety disorder, which was the result of work-related stress—particularly the written reprimand she had received on May 25, 2021. Claimant’s symptoms included increased blood pressure, elevated heart rate, and shaking. On or around June 1, 2021, claimant was granted medical leave under the Family Medical Leave Act (FMLA).

(4) On June 3, 2021, while claimant was on medical leave, the employer hired another manager to cover claimant’s duties, with the intent that claimant and the other manager would be co-equal when claimant returned from leave. The employer did not inform claimant that the other manager was her peer rather than her subordinate.

(5) On July 2, 2021, claimant returned to work after her medical leave ended. At the time, claimant believed that the other manager had been hired as her assistant manager. On July 3, 2021, claimant and the other manager were working together when two servers called in absent for their shifts. As a result, claimant felt that arranging for coverage in the lounge, restaurant, and banquet areas should be their primary concern. However, the other manager pressed claimant to discuss another business matter that claimant felt was not as urgent. Claimant told the other manager that they could discuss it later, and the two subsequently had a disagreement about whether the other manager reported to claimant, or directly to the general manager. While claimant did not raise her voice towards the other manager, an employee who witnessed the interaction between the two found it “very unpleasant” and reported the incident to human resources and the general manager. Transcript at 23.

(6) On July 6, 2021, the employer’s human resources director called claimant into a meeting and issued a written reprimand to her for having behaved in an “unprofessional” manner during the July 3, 2021 incident. Transcript at 8. Claimant subsequently spoke about the issue with the general manager, who also told her that he felt she had behaved unprofessionally. Both meetings exacerbated claimant’s anxiety.

(7) On July 6, 2021, as a result of the written reprimand that the employer had given her and the resulting exacerbation of claimant’s anxiety, claimant voluntarily quit work.

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 voluntarily quit work due to an exacerbation of her anxiety symptoms that was caused by the disciplinary action that the employer took against her shortly after her return from medical leave. The order under review concluded that this did not constitute a situation of such gravity that claimant had no reasonable alternative but to quit work. Order No. 21-UI-179097 at 3. The record does not support that conclusion. The record shows that claimant’s anxiety and related symptoms were, at least in part, the

result of the written reprimands she had received shortly before and after her medical leave. Given that the symptoms included cardiovascular effects such as heightened blood pressure and heart rate, claimant's situation was of such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work if there were no reasonable alternative.

The order under review concluded that claimant had the reasonable alternative of taking additional medical leave. Order No. 21-UI-179097 at 3. However, the record does not support that conclusion. Had claimant's anxiety been caused solely by factors unrelated to work, such that claimant could reasonably expect that the problem might resolve with time off from work, taking additional leave might have been a reasonable alternative. However, the stress of working for the employer was a cause of claimant's medical issues, and the evidence in the record does not show that taking additional time off from work would have addressed the underlying cause. A reasonable and prudent person suffering from anxiety caused by work-related stress would not request additional medical leave if they had reason to expect that the cause of their anxiety would remain when they returned to work. Therefore, taking additional medical leave would have been futile, and not a reasonable alternative to quitting.

Because claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit, she quit work for good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-179097 is set aside, as outlined above.

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

DATE of Service: January 4, 2022

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 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 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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