

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1051

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance effective September 19, 2021 (decision # 134421). Claimant filed a timely request for hearing. On December 1, 2021, ALJ Lucas conducted a hearing at which the employer failed to appear, and on December 3, 2021 issued Order No. 21-UI-181051, affirming decision # 134421. On December 8, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Northwest Surgical Specialists LLP employed claimant as a prior authorization coordinator from January 20, 2019 until September 24, 2021.

(2) In the late summer of 2021, the employer announced that their employees were required to get vaccinated against COVID-19. Claimant did not see the necessity of getting vaccinated because she worked remotely for the employer. However, claimant had a newborn son and decided to get vaccinated for his benefit.

(3) On or about September 14, 2021, the employer informed claimant that they planned to assign her to train an employee, and that the training would include some in-person sessions in the office. Claimant did not like the plan because the trainee had expressed opposition to getting vaccinated and claimant suspected the employer exempted the trainee from the vaccination requirement, which claimant viewed as unfair preferential treatment. Claimant informed the employer's executive providers that she disagreed with the plan to have in-person training sessions in the office.

(4) On September 20, 2021, K.C., one of the employer's executive providers,¹ called claimant and told her that she "ha[d] no choice but to do what [K.C.] said, that it was [K.C.'s] executive decision and [claimant] had to follow 'em, or else." Transcript at 9. On the same day, K.C. sent a text message to

¹ An executive provider was a provider who held an ownership interest in the employer and served on the employer's executive team, overseeing operations.

claimant that stated “[i]t’s important to me that you demonstrate your support about this decision, in your interactions with [the trainee], even if you’re unsure about this. You are in a senior position . . . and I appreciate and expect your support.” Transcript at 11.

(5) On September 23, 2021, a different executive provider emailed claimant advising that he was meeting with K.C. that day to discuss the trainee’s training, noting that some in-person sessions with the trainee were unavoidable, and that the trainee would need to be fully remote within a matter of weeks. Claimant sent a response email that stated, “[w]ith an unvaccinated newborn at home . . . coming onsite is not appealing to me due to COVID.” Transcript at 13. Claimant’s email continued that “assuming [the trainee] is full[y] vaccinated, we can go forward” but “[i]f she is not, then I’m not comfortable being around her[.]” Transcript at 13. Claimant’s email further requested training space with minimal patient foot traffic, a lactation room, and permission to bring her son to the office if she had issues with daycare.

(6) Shortly thereafter on September 23, 2021, K.C. sent a reply email to claimant. The email stated that the in-person sessions were “not up for debate” but that claimant had the authority to create the training plan, the employer intended the training to occur in a space with no patient foot traffic, that claimant would be provided a lactation space, and that the office manager would speak to claimant regarding whether she could bring her son to the office. Transcript at 13.

(7) Claimant replied that she would need to confirm that the trainee was vaccinated against COVID-19. K.C. sent another email stating that she could not share with claimant the vaccination status of other employees. Later that day, K.C. called claimant and again conveyed that claimant was required to obey K.C.’s orders and there could be adverse employment consequences if claimant did not do so.

(8) On September 24, 2021, claimant sent a resignation letter to all of the employer’s providers, and quit that day upon the completion of her shift. Claimant quit because she believed K.C.’s communications subjected her to harassment and created a hostile work environment. Claimant also quit because she suspected the trainee was allowed to not get vaccinated and therefore received preferential treatment.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work 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.

To the extent that claimant resigned because she believed K.C.’s communications subjected her to harassment and a hostile work environment, claimant quit without good cause. K.C.’s communications were not objectively disrespectful in tone, and the substance of them reflected merely that K.C. expected claimant to obey the employer’s orders. The record does not show that the communications subjected claimant to abuse, oppression, name-calling, foul language, or threats of physical harm that would have

rendered claimant's situation grave. *Compare McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits[.]"). Viewed objectively, claimant did not show that no reasonable and prudent person would have continued to work for their employer for an additional period of time based on K.C.'s communications.

To the extent that claimant quit because she suspected the trainee was allowed to not get vaccinated, and therefore received preferential treatment, claimant also quit without good cause. As a preliminary matter, it is not evident from the record that the trainee actually received any treatment that was preferential to claimant, because it is unknown whether the employer actually allowed the trainee to not get vaccinated. While claimant suspected the trainee was unvaccinated, the record suggests that claimant did not know conclusively, given the request in claimant's email that K.C. confirm the trainee's vaccination status. In any event, claimant did not establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work because the employer allowed the trainee to not get vaccinated (if they did) while claimant was required to get vaccinated and had done so. This is because claimant did not show how she benefitted by leaving work and reducing her income to zero because of her perception that the trainee was treated preferentially. *Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work).

To the extent claimant's resignation due to the employer giving the trainee preferential treatment by allowing the trainee to not get vaccinated (if they did) was intended to benefit claimant because she believed the in-person training sessions posed a danger to her child, claimant did not establish that she faced a grave situation. This is because claimant was herself vaccinated, which would have offered a high level of protection from spreading COVID-19 due to any potential exposure to the virus from the trainee. Further, the record reflects that the in-person training sessions would be short-lived given that the trainee needed to be fully remote within a matter of weeks. Additionally, claimant did not establish that the employer lacked COVID-19 safety measures such as social distancing and face coverings, and even if they did, which is unlikely given that they were a medical clinic, claimant had the authority to create the training plan and so more likely than not had the discretion to impose safety measures during the in-person sessions. For these reasons, claimant was not presented with a situation of such gravity that she had no reasonable alternative but to leave work.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective September 19, 2021.

DECISION: Order No. 21-UI-181051 is affirmed.

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

DATE of Service: January 14, 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.

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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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