

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1052

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on her work separation (decision # 103608). The employer filed a timely request for hearing. On November 15, 2021, ALJ Micheletti conducted a hearing, and on November 18, 2021 issued Order No. 21-UI-180055, reversing decision # 103608 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits, effective August 29, 2021. On December 8, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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. 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 claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) New Seasons Market LLC employed claimant as an assistant manager from February 17, 2021 to September 1, 2021. Claimant was based at the employer's Cedar Hills location, but she also worked as a member of the employer's COVID-19 response team, which required her to cover for assistant managers at other locations when they tested positive for COVID-19. When working at the Cedar Hills location, claimant's immediate supervisor was G.S., whom claimant believed had treated her disrespectfully on occasion and was "micro managey (sic)." Transcript at 19.

(2) The employer maintained a "speak up" policy that allowed employees to address any work-related concerns, first with their immediate supervisor, and then escalate the matter to a higher-level management authority if necessary. Transcript at 24. The employer also maintained an anti-harassment policy that allowed any employee who felt they had been harassed by another employee, to report the

matter to any manager, director or via the employer's confidential 24-hour ethics hotline. Claimant was aware of these policies and procedures.

(3) Prior to November 26, 2020, claimant and G.S. had an incident where G.S. raised his voice at claimant in front of several employees and customers. A co-worker reported the incident to the employer's human resources (HR) department, and HR investigated the incident. HR's investigation determined that G.S. had not harassed claimant, rather the incident was the result of a personality conflict. The employer arranged to have an HR representative mediate a conversation between claimant and G.S. to address the conflict. Claimant's relationship with G.S. remained tense following the mediated conversation.

(4) On January 2, 2021, claimant spoke with an HR manager at the Cedar Hills location about her continued "frustration" over G.S.'s conduct toward her. Transcript at 32. Although G.S.'s disrespectful behavior toward claimant continued after January 2, 2021, claimant never filed her own formal complaint with the employer, nor otherwise raised the issue with the employer.

(5) Between January 2, 2021 and July 6, 2021, claimant observed a customer intimidating other customers in a store with a "whip stick". Transcript at 7. Claimant believed that the employer's policies prevented her from asking the customer to leave. Claimant became concerned for the safety of her work environment.

(6) On or about August 24, 2021, claimant had a conversation with the employer's operations manager and the employer's HR manager. The two advised that claimant was to spend the next two weeks working at the employer's Grant Park location. Also during the conversation, the parties discussed claimant's safety concerns and her feeling that she was not empowered to address troublesome customers. The employer clarified their expectation that she address such customers using her best judgment. The employer believed that the conversation had been successful in addressing claimant's safety concerns.

(7) Between August 24, 2021 and September 1, 2021, claimant completed a safety-related class for the employer on theft and worked at the Grant Park location. While working at the Grant Park location, claimant learned she was covering for an employee who had been assaulted by a customer. Learning this information made claimant "not want to be there anymore." Transcript at 23.

(8) On September 1, 2021, claimant quit working for the employer. Claimant quit because of her continuing concerns about G.S.'s disrespectful conduct and her concerns about workplace safety in light of the Grant Park assault. Prior to quitting, claimant did not raise with the employer her concerns about G.S.'s conduct or her concerns about workplace safety in light of the Grant Park assault.

CONCLUSIONS AND REASONS: Claimant 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). "[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 record shows that claimant quit work for two primary reasons. First, claimant remained frustrated by the improper behavior she felt she had continued to receive from G.S. Second, claimant believed that her work environment had become unsafe based on the “whip stick” incident and the Grant Park assault, and her belief that she was not empowered to ask troublesome customers to leave the store. Although it can be inferred from the record that claimant was not, herself, the victim of any workplace violence, the record shows that her concerns about workplace safety were nevertheless valid. Furthermore, when these workplace safety concerns are coupled with the evidence showing that claimant continued to face improper behavior from G.S., the cumulative effect of these circumstances amounted to a grave workplace situation for claimant.

However, claimant has the burden to demonstrate that notwithstanding the grave situation she faced, she had no other reasonable alternative but to leave work. Claimant has not met this burden. The record shows that with respect to her continuing issues involving G.S., claimant could have addressed her concerns with another manager, a director, or she could have filed a confidential complaint with the employer’s 24-hour ethics hotline. In fact, the record shows, objectively speaking, that the employer’s grievance procedure functioned well, as demonstrated by the HR complaint filed on claimant’s behalf by one of her coworkers in late 2020. In that instance, the employer investigated the incident involving claimant and G.S. and attempted to mediate a resolution. Although the record shows that claimant spoke with an HR manager on January 2, 2021 about her continuing frustrations with G.S.’s conduct, claimant never again raised any concerns about G.S. with the employer, through any of the avenues available for to do so during the next eight months between January 2, 2021 and her September 1, 2021 quit date. Had claimant done so, it is reasonable to conclude that the employer would have taken additional actions to improve claimant’s work situation.

Similarly, the record shows that claimant had the same avenues available to her to raise any concerns about her workplace safety and that she did, in fact, raise those concerns during her August 24, 2021 conversation with the employer. During that conversation, the employer attempted to allay claimant’s concerns by explaining to her that she was empowered to use her best judgment to address problematic customers and ensured that claimant completed additional safety-related training in the week that followed the conversation. The employer was under the impression that the conversation had resolved claimant’s safety concerns. However, despite this evidence showing that the employer was responsive to safety-related issues, claimant did not approach the employer after learning about the assault of a coworker at the Grant Park location and instead elected to quit work. Claimant did not request a transfer to a different store. Had claimant raised her concerns regarding the Grant Park assault, and given the employer’s responsive approach when the safety issue had been previously raised, it is reasonable to conclude that the employer would have taken action to address her safety concerns.

Because the record shows that claimant had reasonable alternatives to quitting available to her, despite the grave situation she faced, claimant did not quit work with good cause and she is therefore disqualified from receiving unemployment insurance benefits effective August 29, 2021.

DECISION: Order No. 21-UI-180055 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 desisyong ito.

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 الإستئناف 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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