

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1057

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 18, 2020 (decision # 110406). Claimant filed a timely request for hearing. On November 15, 2021, ALJ Wyatt conducted a hearing, and on November 19, 2021 issued Order No. 21-UI-180181, affirming decision # 110406. On December 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her 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 was not relevant and material to EAB's determination as required by OAR 471-041-0090(1)(b)(A) (May 13, 2019). In particular, claimant asserted in her written argument that she had "submitted several documents to the Oregon Employment Department about what happened and the Office of Administrative Hearings, but was informed that the documents were not made available to the [administrative law] judge at the time of the hearing." Claimant's Written Argument at 1. Claimant appears to have been referring to two written statements, dated October 21, 2021 and October 6, 2021, which she attached to her written argument and which she had sent to the Office of Administrative Hearings (OAH) in advance of the hearing but which were not made available to the ALJ or received into evidence. Claimant's Written Argument at 3-4. The record does not indicate that claimant provided copies of those statements to the employer as required by OAR 471-040-0023(4) (August 1, 2004). Additionally, EAB reviewed the contents of those statements, and to the extent that the statements contained information material to EAB's determination in this case, that information was also satisfactorily addressed in claimant's testimony at hearing. For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Tax Minimizers of Oregon, Inc. employed claimant from about September 2020 until October 21, 2020. Claimant performed bookkeeping and payroll services for the employer.

(2) During the approximately one-month period in which claimant worked for the employer, claimant was regularly frustrated by what she perceived as insufficient training and her supervisor's lack of availability.

(3) On October 21, 2020, claimant met with her supervisor for a "30-day informal review" in order to discuss claimant's feelings about the job, what she needed from the employer, and what the employer needed from her. Transcript at 15. During the meeting, claimant informed her supervisor that she felt frustrated because she was not receiving the training she needed to perform the job well, and gave her supervisor examples of resources she needed to perform the job better. Additionally, the employer raised with claimant her concerns that claimant had been contributing "negativity" to the office, and that the employer did not want that to continue. Transcript at 17. The supervisor also asked claimant if she felt like she would be successful in the job if the employer gave claimant what she was asking for, and claimant responded that she did not know. Transcript at 17. Claimant felt that the conversation "was not producing any . . . positive results," and ultimately told the employer, "let's agree to disagree and call this good[.]" Transcript at 13, 17. The supervisor responded, "Well . . . I guess that's the end of this if you're, you know, wanting to leave." Transcript at 17. Claimant left and did not return to work for the employer thereafter.

(4) The employer did not intend the October 21, 2020 meeting to be disciplinary in nature. If claimant had not left on October 21, 2020, the employer would have permitted claimant to continue working for them.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Nature of the Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, claimant testified that she recalled that she and the employer had reached a "mutual agreement to just end the assignment." Transcript at 13. However, during the meeting on October 21, 2020, after the employer attempted to work with claimant to address the issues they had both identified in the meeting, claimant suggested that the two "agree to disagree and call [it] good." That the employer accepted claimant's decision to separate does not change the fact that it was claimant's decision to do so. By suggesting that she and the employer "agree to disagree and call [it] good" claimant demonstrated an unwillingness to continue working for an additional period of time. The record shows that the employer would have allowed claimant to continue working for them. For that reason, because claimant could have continued to work for the employer for an additional period of time but was unwilling to do so, the separation was a voluntary leaving that occurred on October 21, 2020.

Voluntary Quit. 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.

As discussed above, claimant asserted that she and the employer “mutually” agreed to separate. As such, she did not explicitly acknowledge in her testimony that she quit, and therefore did not explicitly explain *why* she quit. However, it is reasonable to infer from claimant’s testimony that she quit because she was frustrated with what she perceived as inadequate training, lack of access to her supervisor, and similar concerns about working conditions. Claimant has not met her burden to show that her concerns constituted a situation of such gravity that she had no reasonable alternative but to leave work. Claimant did not, for instance, allege any type of harm or potential harm that may have come to her had she continued to work for the employer—only that she might have continued to feel frustrated. Further, even if claimant’s situation *was* grave, claimant had the reasonable alternative of attempting to work with her supervisor to address the issues. At hearing, claimant’s supervisor’s testimony suggested that she would have been willing to offer claimant the resources that claimant felt she was lacking and made such offers during the October 21, 2020 meeting. Claimant did not explain why she felt that this would not have been sufficient to allow her to continue working, and therefore did not show that she sought reasonable alternatives prior to quitting.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective October 18, 2020.

DECISION: Order No. 21-UI-180181 is affirmed.

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

DATE of Service: January 13, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.