

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0005

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 10, 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 March 1, 2020 (decision # 75242). Claimant filed a timely request for hearing. On December 23, 2021, ALJ Mott conducted a hearing, and on December 27, 2021 issued Order No. 21-UI-182674, affirming decision # 75242. On January 2, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Plaid Pantries Inc. employed claimant as a sales associate from February 11, 2020 until March 5, 2020.

(2) On March 5, 2020, claimant reported for her 3:00 p.m. to 10:00 p.m. shift. After claimant worked for about an hour, claimant's manager approached claimant to discuss her sale of lottery tickets. The manager told claimant that she thought claimant had been entering the sale of lottery tickets into the cash register incorrectly. Claimant did not think she had been doing anything incorrectly and felt embarrassed by the discussion because it occurred behind the counter in view of customers.

(3) As the two were discussing the matter, a customer who wanted to buy lottery tickets approached the register. Claimant asked the manager if she could coach claimant during the transaction to ensure that she entered the lottery ticket sales correctly. The manager responded "[n]o, end of discussion[.]" Transcript at 19. Claimant was taken aback by the manager's response and did not "think [she had] ever been disrespected by anyone in [her] life, to where [she] felt like she was disrespected there[.]" Transcript at 25.

(4) Claimant then took off her vest, walked out of the employer's store, and went home. When she got home, claimant initially intended to text the manager but "felt the communication was not there, and that the way the situation was handled was incorrect[.]" Transcript at 26. Claimant decided to "just let it go" and if "[her] employment was . . . as beneficial as [she] felt like it was, then [the manager] would have called [claimant] back." Transcript at 26.

(5) On March 6, 2020, claimant was not scheduled to work but returned to the employer's store to pick up her paycheck. When she arrived, the manager was not present, but an assistant manager was there. The assistant manager did not say claimant was discharged. However, claimant saw that two paychecks were waiting for her, which made her assume she was no longer employed by the employer. Claimant took the paychecks and never worked for the employer again.

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

Nature of 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) (December 23, 2018). 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).

The preponderance of the evidence shows that claimant quit working for the employer on March 5, 2020. On that date, about one hour into her shift, claimant took off her vest, walked out of the employer's store, and went home. Upon getting home, claimant opted not to contact her manager and decided to "just let it go" because if "[her] employment was . . . as beneficial as [she] felt like it was, then [the manager] would have called [claimant] back." Transcript at 26. By walking off the employer's premises during the middle of a shift and then deciding not to contact her manager upon getting home on March 5, 2020, the record shows that claimant was unwilling to continue to work for the employer for an additional period of time. Although claimant returned to the employer's store the next day, she did so to pick up her paycheck, not to work. When she arrived and saw that she had two paychecks waiting for her, claimant assumed that her employment was terminated. However, the record lacks conclusive evidence that the presence of two paychecks equated to termination of her employment, especially given that the assistant manager did not say claimant was discharged. In any event, and regardless of the presence of the two paychecks on March 6, 2020, the record evidence shows that, more likely than not, continuing work was available on March 5, 2020, but claimant was no longer willing to work for the employer as of that date when she walked off the job during her shift. Thus, the work separation was a voluntary leaving that occurred on March 5, 2020.

Voluntary Leaving. 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) (December 23, 2018). "[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.

Claimant did not establish that she quit work with good cause. The record shows that claimant quit work on March 5, 2020 because she felt that her manager disrespected her when she asked her manager for coaching on lottery ticket sales and the manager responded "[n]o, end of discussion[.]" Transcript at 19. Claimant's situation was not such that a reasonable and prudent person of normal sensitivity exercising ordinary common sense, would leave work. While the manager's refusal to provide coaching was curt,

the manager did not subject claimant to abuse, oppression, name-calling, foul language, or threats of physical harm such 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[.]"). Further, the record shows that claimant could have proceeded with the transaction despite the manager's refusal to coach. Claimant did not think she was doing anything incorrectly regarding lottery ticket sales, and the record does not show that claimant faced any discipline for entering the sale of lottery tickets in a manner that her manager perceived as incorrect. For these reasons, claimant did not show that she faced a situation of such gravity that she had no reasonable alternative but to leave work when she did.

As such, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 1, 2020.

DECISION: Order No. 21-UI-182674 is affirmed.

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

DATE of Service: February 9, 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 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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