

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0065

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 14, 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 August 15, 2021 (decision # 105533). Claimant filed a timely request for hearing. On December 16, 2021, ALJ Lucas conducted a hearing at which the employer failed to appear, and on December 21, 2021 issued Order No. 21-UI-182375, affirming decision # 105533. On January 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Findlay Auto employed claimant as a sales representative from June 15, 2021 until August 16, 2021.

(2) On June 15, 2021, claimant's sales manager sent claimant a text asking claimant if there were any "vibes" between them. Transcript at 6. Claimant did not respond. On June 16, 2021, the sales manager texted claimant again and asked claimant to call him to discuss her work schedule. Claimant called the sales manager, who raised his previous text message inquiring about "vibes[.]" Transcript at 6. Claimant told the sales manager that she did not date coworkers or customers, and would appreciate it if the sales manager kept it professional. The sales manager then told claimant to "just wash it, no big deal[.]" Transcript at 6.

(3) On June 25, 2021, claimant was working when a customer came into the employer's dealership wearing an outfit that claimant thought looked attractive. Claimant commented that she liked the

customer's outfit. The sales manager smirked at claimant and stated that the outfit "would look better" on her. Transcript at 6. Claimant walked away from the conversation and avoided the sales manager for the rest of the day.

(4) On June 29, 2021, claimant came into work wearing a sweatshirt. The sales manager saw how claimant was dressed and sent her a text telling her that she "looked cute." Transcript at 9. Claimant responded "thank you, certainly didn't feel like it, sweating to death, smart me wear a sweatshirt." Transcript at 10. The sales manager continued texting claimant and she concluded that he was not "getting the hint" and stopped responding to his texts. Transcript at 10. The sales manager then tried talking to claimant in person and "kept following [her] everywhere[.]" Transcript at 10. Claimant tried avoiding the sales manager for the remainder of her shift.

(5) On July 15, 2021, claimant noticed that the sales manager had removed multiple customer leads from her sales profile. Claimant approached the sales manager and asked him why he had removed her leads. The sales manager stated that he did so because claimant did not log customer notes properly and did not give a customer a price on a car within three days of contacting that customer. The sales manager's explanation confused claimant because she had previously asked a different manager if her customer notes were sufficient, and that manager confirmed that they were. Claimant explained that she did not give the customer a price because the employer did not have a price available. The sales manager responded that he did not believe the employer would not give claimant a price for the car. Claimant got upset, and stated "this has nothing to do with the car" and "everything to do with I'm not responding to your advances." Transcript at 12. Claimant then gathered her belongings and walked off the job without completing her shift.

(6) On July 18, 2021, claimant had a conference call with her general manager and the employer's human resources (HR) manager. Claimant explained what occurred on July 15, 2021, and the three agreed to have an in-person meeting to discuss further. The three met on July 21, 2021. The general manager and HR manager told claimant that walking off the job was not acceptable and that she would be terminated if it happened again. The managers also mentioned that claimant had been a couple of minutes late on some occasions and had not been clocking in for her shifts properly. The critiques the managers raised surprised claimant, because she expected the meeting to focus on the sales manager's behavior. The employer had never before raised tardiness issues with claimant, and it was claimant's understanding that "nobody really cared about the time clock" because it was a commission job. Transcript at 26.

(7) Claimant stated that she did not feel comfortable and asked what the employer planned to do about the sales manager's behavior. The general manager said, "I took care of the situation. Just come back to work and do your job." Transcript at 15. Claimant agreed to return to work and the meeting ended. Shortly afterward, the HR manager sent claimant an email memorializing the call. The email stated that walking off the job was a terminable offense, and claimant needed to report for work on time and clock in properly. The email did not contain any reference to claimant's concerns about the sales manager.

(8) On August 4, 2021, claimant clocked in for her shift one minute late. The general manager, who was on vacation but was monitoring when claimant clocked in and out, called the manager supervising claimant that day—a different manager than the sales manager who had expressed romantic interest in claimant—and asked him to give claimant a write-up.

(9) On August 11, 2021, the employer held a training for selling a particular vehicle model. Claimant saw that all the other sales representatives were signed up for the training, but that she was not allowed to do the training. The employer also had not allowed claimant to receive training necessary for a particular certification needed to receive bonuses for selling new cars. Although claimant had requested multiple times to go through certification training, the general manager did not sign her up for it.

(10) August 11, 2021, claimant called out for her next several shifts because all of the managers other than the sales manager were on vacation, and claimant did not feel comfortable working exclusively with him.

(11) On August 16, 2021, claimant quit working for the employer because she believed that the sales manager had sexually harassed her and that the employer was retaliating against her for reporting it.

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). 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 voluntarily quit work because her manager had been sexually harassing her, and she believed that the employer was retaliating against her for reporting it. The order under review concluded that this did not constitute a situation of such gravity that claimant had no reasonable alternative but to leave work. Order No. 21-UI-182375 at 3. The record does not support this conclusion.

On this record, which does not contain any evidence from the employer because they did not participate at hearing, the preponderance of evidence supports that claimant left work with good cause. Claimant’s situation was grave. The record shows that claimant received multiple unwelcome expressions of romantic interest from her sales manager. The record further shows that after claimant demonstrated that she was not receptive to the sales manager’s advances, the sales manager removed several leads from her sales profile. Claimant perceived this conduct as retaliation and raised it with her general manager and the HR manager. The general manager and HR manager advised they would address the sales manager’s behavior. However, they also expressed concern about claimant’s tardiness and use of the time clock—critiques the employer had not made before. Thereafter, the general manager, monitoring remotely while on vacation, requested that the supervisor on duty write claimant up for being one minute late, which the manager on duty declined to do. Furthermore, the record shows that after claimant raised her concerns about the sales manager’s behavior, the employer declined to allow her to join a training for selling a particular vehicle and continually declined to sign claimant up for a certification claimant needed to receive bonuses for selling new cars. Viewed in its totality, this evidence is sufficient to conclude that the scrutiny of claimant’s clock-in time, insistence on writing her up for a trivial violation, and withholding of training opportunities were, more likely than not, such that

a reasonable and prudent person would believe they were being retaliated against. Claimant's situation was grave because a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work for being retaliated against after reporting sexual harassment by a supervisor. The record further shows that pursuing the alternative of the raising the retaliation claimant was experiencing with the employer would have been futile. Claimant had previously raised the sales manager's removal of leads from her sales profile with the general manager and HR manager, and, although those individuals stated they would address the situation, claimant experienced additional retaliation thereafter. Additionally, while claimant may have eventually been able to resolve the matter by reporting the employer to the Bureau of Labor and Industries (BOLI), doing so would not have been a reasonable alternative because she would have likely continued to experience the same grave situation for an extended period of time while BOLI investigated the matter. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI).

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-182375 is set aside, as outlined above.

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

DATE of Service: February 11, 2022

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.

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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