

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0088

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 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 May 16, 2021 (decision # 84010). Claimant filed a timely request for hearing. On December 16, 2021, ALJ Micheletti conducted a hearing, and on December 22, 2021 issued Order No. 21-UI-182499, affirming decision # 84010. On January 11, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Minute Market employed claimant as a cashier from November 30, 2020 to May 16, 2021.

(2) The employer maintained a policy prohibiting workplace discrimination. The employer's policy instructed employees who believe they have suffered workplace discrimination to contact the employer's human resources (H.R.) department first and if they could not contact H.R., to contact the employer's ownership. Claimant was aware of the employer's policy regarding workplace discrimination.

(3) Claimant suffered from epilepsy and experienced seizures because of her condition. Although the employer was aware of claimant's condition, claimant felt that her supervisor minimized her epilepsy condition by calling it "not a big deal" and by laughing at her and stating that her condition was not as serious as her coworker's epilepsy condition. Transcript at 9. Claimant also believed that her supervisor discriminated against her because of her epilepsy condition by giving her more work to perform than he gave to her coworkers and by singling her work performance out when they perceived it to be poor.

(4) On or about May 9, 2021, claimant suffered a seizure while working alone in the employer's store and was taken to the hospital. Claimant subsequently texted her supervisor to request that they have a second employee work with claimant during claimant's weekend shifts in case she suffered another seizure. Claimant's supervisor responded to claimant that they did not understand why having a second worker on shift with claimant was necessary.

(5) On May 10, 2021, claimant attempted to contact the employer's H.R. department to request that they arrange for a coworker to work with claimant during her future weekend shifts. Claimant did not reach an H.R. employee, but she left a voicemail with her request, and also stated that her supervisor did not understand why claimant needed a second worker during her shifts. Although the H.R. department did not return claimant's call, the employer arranged to have a second person work during claimant's weekend shifts for her safety. Claimant did not raise any concerns in the voicemail about discriminatory acts committed by her supervisor.

(6) On May 16, 2021, claimant received a text message from her supervisor where they told claimant that she had failed to adequately clean the workplace parking lot the night before as evidenced by a cigarette butt the supervisor found in the parking lot. The text message included a photograph of the cigarette butt. Claimant was upset about the text, thought it was another example of the unfair treatment she had received from the supervisor due to her epilepsy, and decided to go to the employer's workplace to confront her supervisor. Claimant did not plan to quit at the time she went to the workplace; however, after an argument between she and the supervisor ensued, claimant quit her job because of the supervisor's unfair treatment due to claimant's epilepsy. Claimant did not pursue the possibility of a transfer with the employer and did not work for the employer again.

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). Claimant had epilepsy, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit work on May 16, 2021 because she believed that her supervisor's criticism over her apparent failure to adequately clean the employer's parking lot (because she purportedly missed a cigarette butt) reflected a repeated pattern of the supervisor's discrimination towards her that was based on her epileptic condition. Specifically, the record shows that claimant believed her supervisor had minimized her epilepsy by routinely giving her more work to perform than they gave her coworkers and then singling her out when they perceived her work performance was poor. In light of this context, and given that claimant's supervisor had previously laughed at claimant's epileptic condition, said that her condition was not a big deal, and minimized claimant's condition relative to that of a coworker, the preponderance of the evidence shows that claimant faced a grave workplace situation caused by her supervisor's treatment.

However, claimant failed to show that she had no reasonable alternative but to leave work when she did. To the contrary, the preponderance of the evidence shows that claimant had the reasonable alternative to contact the employer's H.R. department to pursue several alternatives short of quitting. First, claimant

could have contacted H.R. and submitted a complaint based on her perception of discrimination from her supervisor. The record shows that had claimant pursued this alternative, the employer would have, more likely than not, “addressed the situation” with her supervisor and “gotten to the bottom of it.” Transcript at 27. In the context of this case, this alternative was particularly reasonable given claimant’s additional testimony that her supervisor “appreciate[d] the fact that [claimant] actually did [her] job,” thereby suggesting the possibility that claimant’s perceptions of discrimination might have been inaccurate. Transcript at 7. Likewise, the record shows that had this approach not ultimately led to a conclusion claimant believed to be satisfactory, the employer’s H.R. department could have addressed with claimant the potential of a transfer to one of their other workplace locations.

The record shows that claimant did try to make contact with H.R. after her seizure and that H.R. never responded to the voicemail she left. However, the record shows that the focus of claimant’s voicemail was her request for the employer to place another worker on her weekend shifts in case she suffered a future seizure and that the employer was, in fact, responsive to claimant’s request. While claimant did mention her supervisor in the voicemail, the record shows that she did so only to inform the employer that the supervisor did not understand why another coworker on claimant’s shifts was needed. Claimant never explicitly stated in her voicemail that she felt her supervisor was discriminating against her based on her epileptic condition. Had claimant brought her discrimination concerns to the attention of H.R., the preponderance of the evidence suggests that the employer would have responded to her concerns in an appropriate fashion as noted above. Because claimant did not pursue the reasonable alternative of bringing her discrimination concerns to her employer prior to her decision to quit, claimant failed to act as a reasonable and prudent person suffering from epilepsy would have acted. As such, claimant has failed to show that she had good cause to quit her job and she therefore is disqualified from receiving benefits effective May 16, 2021.

DECISION: Order No. 21-UI-182499 is affirmed.

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

DATE of Service: February 23, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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