

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0099

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective June 20, 2021 (decision # 152916). Claimant filed a timely request for hearing. On January 5, 2022, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on January 10, 2022 issued Order No. 22-UI-183651, affirming decision # 152916. On January 14, 2022, 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) Grande Ronde Hospital employed claimant from June 1, 2021, when the employer purchased the business from claimant's previous employer, until June 21, 2021. Claimant worked as a scheduler and medical assistant in training for the doctor who had transferred with her from her previous employer to Grande Ronde Hospital. Claimant had worked assisting the doctor for 15 years.

(2) In preparation for the change of ownership in the business, claimant had multiple conversations with the employer's receptionist regarding patients who were staying on with the doctor claimant assisted. During one of claimant's conversations with the receptionist, the receptionist was "screaming," "would not stop yelling," and used foul language toward claimant despite claimant having asked her to stop yelling. Transcript at 14-15.

(3) On June 3, 2021, claimant complained about the receptionist's conduct to the nursing supervisor, to whom claimant directly reported. Claimant and the nursing supervisor met with the receptionist's direct supervisor, the office manager. The office manager did not address the receptionist's conduct other than

to tell claimant that “it was a big office, and that [they] needed to get along, and that there was lots of work to do.” Transcript at 23.

(4) On June 9, 2021, claimant discussed her concerns about the receptionist’s conduct with the doctor whom claimant assisted. The doctor agreed that the receptionist’s conduct was inappropriate and that he would meet with claimant and other staff to address the situation. However, the doctor had to leave work unexpectedly for the following two weeks due to a family emergency.

(5) The receptionist’s conduct toward claimant progressively worsened during the following two weeks, during which time the nursing supervisor was also on vacation, and therefore unavailable. The receptionist continued to yell at claimant and hung up the phone on her twice. The receptionist also sent claimant emails that were unnecessarily urgent in tone, with capitalized letters and exclamation marks, stating that claimant should respond to them “stat.” Transcript at 20. The receptionist communicated in a “panicked” and “angry” manner toward claimant. Transcript at 16. The receptionist refused to follow protocol regarding patients of the doctor whom claimant assisted.

(6) The receptionist’s conduct, and the clinic manager’s response to claimant’s complaints about the conduct, affected claimant’s mental and physical health. Claimant experienced crying, difficulty eating and sleeping, depression, and elevated blood pressure as a result of the negative interactions at work. Claimant’s medical provider prescribed claimant medication to treat situational depression, and monitored claimant’s high blood pressure weekly during that time.

(7) When the nursing supervisor returned from her vacation in mid-June 2021, claimant complained to her again about the receptionist’s conduct. The nursing supervisor stated that she would arrange a meeting between herself, claimant and the office manager.

(8) On June 21, 2021, claimant met with the nursing supervisor and the office manager. When claimant began to address the problems she was having with the receptionist, the office manager refused to discuss the matter. Instead, at the meeting, the office manager told claimant that she was not following certain office protocols, and told claimant that if the receptionist complained again about claimant, claimant would be discharged. Claimant was not aware of the office protocols that she allegedly had not been following. Claimant felt “severe distress” after the meeting from the fear that the receptionist could cause claimant’s termination by making a complaint about claimant, whether it was valid or not. Transcript at 29.

(9) Later on June 21, 2021, claimant gave the nursing supervisor and the employer’s human resources department a written complaint about how the receptionist mistreated her, and how the office manager failed to address claimant’s complaints about the mistreatment. Also at that time, claimant quit work due to the impact of work-related stress on her health.

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. A claimant with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) 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.

As a preliminary matter, the record does not show that claimant’s health conditions would require application of a modified standard for determining good cause to quit. Because claimant’s depression was treated as situational, rather than long-term, claimant’s situation must be considered from the viewpoint of a reasonable and prudent person—not a reasonable and prudent person with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h).

Order No. 22-UI-183651 reasoned that claimant left work primarily due to the receptionist’s conduct towards her, and the office manager’s warning on June 21, 2021 that she would be discharged if the receptionist were to complain about claimant. Order No. 22-UI-183651 at 5. The order concluded that although claimant established the situation was “stressful,” she did not establish that it was “grave.” Order No. 22-UI-183651 at 5. The order under review also concluded that in addition to leaving work for a situation that lacked gravity, claimant had reasonable alternatives to leaving work when she did. Order No. 22-UI-183651 at 5. Order No. 22-UI-183651 found that claimant had the reasonable alternatives of meeting with the doctor and the receptionist when the doctor returned to work later in June 2021, or waiting to allow human resources an opportunity to address her June 21, 2021 complaint before quitting. Order No. 22-UI-183651 at 5. However, the record does not support the conclusion that claimant did not face a situation of such gravity that she had no reasonable alternative but to leave work when she did.

The record shows that claimant faced a grave situation, particularly due to the impact of her working conditions on her health. The record evidence is uncontroverted that the receptionist at claimant’s work was mistreating claimant, and that the office manager exacerbated claimant’s work stress by telling her that an additional complaint from the receptionist would result in claimant’s discharge. The record shows that claimant’s working conditions caused her to experience physical and mental health symptoms, including symptoms of high blood pressure and depression. Claimant described herself as feeling “severe distress,” “terrified,” and “severely depressed” from what she experienced at work. Transcript at 28, 37; Exhibit 1 at 5. Her testimony was confirmed by the fact that she was treated for situational depression and high blood pressure during June and July 2021.

Due to the severity of the impact of claimant’s work conditions on her health, claimant had no reasonable alternative but to leave work when she did. Based on claimant’s experiences with the office manager, the record does not show that addressing her concerns about the receptionist with the office manager was a reasonable alternative to quitting, because the record does not show that future complaints to the manager would have been anything but futile. During claimant’s first meeting with the office manager, the manager dismissed claimant’s complaints and told her that she must “get along” with the receptionist. During their last meeting, the office manager refused to discuss claimant’s complaints and instead told her she would be discharged if the receptionist complained about claimant.

Although claimant complained to human resources, given the medical symptoms claimant was experiencing, it was not reasonable for claimant to wait for human resources to address her complaints. Neither is it reasonable to assume that the process of addressing the complaint would not have itself negatively affected claimant's health further. The record does not show that a meeting with the doctor and the receptionist would have changed the receptionist's behavior towards claimant, given the office manager's reaction to claimant's complaints. Nor was there evidence to show that the doctor had any direct authority over the receptionist.

For the above reasons, claimant established that she faced a grave situation at work such that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant therefore voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Order No. 22-UI-183651 is set aside, as outlined above.

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

DATE of Service: February 25, 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 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 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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