

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0255

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 6, 2022, 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 November 24, 2019 (decision # 92641). Claimant filed a timely request for hearing. On February 15, 2022, ALJ Mott conducted a hearing, and on February 16, 2022 issued Order No. 22-UI-186551, reversing decision # 92641 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On February 18, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) St. Mary's Home for Boys, Inc. employed claimant as a residential counselor from August 8, 2016 until November 24, 2019. The employer operated residential cottages on their property where they provided care for at-risk youths (clients) between the ages of 13 and 18.

(2) The employer's clients could become physically aggressive with their employees. As a result, the employer required their employees to undergo annual crisis prevention (CP) training, which included instruction on the appropriate techniques for physically restraining clients when necessary. The employer also required at least three employees to assist with physical restraint situations and provided radios to their employees so that they could call for support in meeting the three person threshold when required. Due to staff shortages caused by a high turnover rate, claimant often worked alongside new counselors who had not yet been trained in CP, which prevented her from safely intervening with "escalated clients." Transcript at 6. Claimant also experienced occasions where her radio calls for assistance with an aggressive client went unanswered by coworkers for long periods. During physically violent episodes with clients, claimant had experienced spitting, slapping, kicking, and punching; and had gone to the emergency room for injuries she suffered on two or three occasions.

(3) Claimant feared going to work due to the unpredictable, yet frequent physical violence she encountered, and she was diagnosed with "major depression." Exhibit 1 at 8. Claimant attempted to address her safety concerns related to understaffing and the inadequate CP training of newer employees during weekly team meetings. Claimant also spoke privately about these issues with the program

manager, but claimant was told in response, “[W]e’re short-staffed. We’re just going to have to manage.” Transcript at 17.

(4) In summer 2019, claimant asked the employer if they would allow her to stop being involved in physical interventions with clients due to her fear of physical injury. The employer told claimant it could not accommodate her request because she was “veteran staff,” the employer was short-staffed, and as a result, she “need[ed] to be involved in those” interventions. Transcript at 18.

(5) In early November 2019, as claimant was preparing to assist with the handcuffing of a client, she became concerned at the nearby presence of the client’s friend because she thought the friend might be “triggered” by the intervention and become physically aggressive as a result. Transcript at 8. When claimant addressed her concerns with her manager and suggested that the friend be taken to a different cottage, the manager “ignored [her] concerns” and went outside to interact with some other clients. Transcript at 8. When the intervention subsequently took place, the client’s friend “pushed through the door” and “[t]hrew [claimant] on the ground several times,” causing claimant injury. Transcript at 8. Claimant radioed for staff assistance, but it took several minutes for any coworkers to respond. Claimant determined this incident was “the final straw,” and decided to resign. Transcript at 7.

(6) On November 24, 2019, after a two-week resignation notice period, claimant quit working for the employer because she no longer felt safe and believed that the employer was ignoring her safety concerns.

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) (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). Claimant had depression, 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 because she felt unsafe in light of the recurring injuries she suffered from the employer’s physically aggressive clients, and because of the employer’s failure to take action to remedy the situation. While claimant understood that her job duties included the possibility that she would, at times, encounter physically aggressive clients and a heightened chance of injury as a result, the record shows that because of the employer’s policies claimant had reason to expect that she would encounter these situations with the assistance of at least two other coworkers trained in CP. However, claimant frequently had to face physically aggressive clients with only the assistance of staff untrained in CP, or by herself, with her radio calls for assistance often going unheeded. As a result, claimant frequently suffered physical injury during these incidents, and the stress caused by the unpredictable nature of these

physical encounters exacerbated her depression. Because claimant's employment caused significant consequences to her physical and mental health, the record shows that she faced a grave situation.

Despite claimant's repeated attempts to raise her safety concerns during weekly team meetings and privately with the program manager, the employer ignored her concerns and was unwilling to excuse her from participating in physical interventions. Although the employer testified that a grievance process was available to claimant, which could have *formally* brought her safety concerns to the attention of her manager (and potentially higher), claimant credibly testified that she was never made aware of this grievance process. Transcript at 24, 27. However, even if she had been aware of the process, the record shows that because she had previously tried to raise her safety concerns with the program manager and was told that she was "just going to have to manage," attempting to resolve her safety concerns through the grievance process likely would have been futile. Under the circumstances, no reasonable person in claimant's position, with the characteristics and qualities of an individual with depression, would have believed they had any reasonable alternative but to leave work. Therefore, claimant quit work with good cause and is not disqualified from the receipt of benefits based on the work separation.

DECISION: Order No. 22-UI-186551 is affirmed.

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

DATE of Service: April 22, 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 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.

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