

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0388

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 1, 2022, 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 January 16, 2022 (decision # 142514). Claimant filed a timely request for hearing. On March 2, 2022, ALJ Wardlow conducted a hearing, and on March 3, 2022 issued Order No. 22-UI-187733, affirming decision # 142514. On March 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer each submitted written arguments. With respect to claimant's argument, he did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). With respect to the employer's argument, the argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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.

FINDINGS OF FACT: (1) D6 Inc. employed claimant as an engineer from June 29, 2020 until January 17, 2022.

(2) Claimant's work for the employer involved working with his manager and a lead engineer on a project to develop a mask prototype. The project involved using equipment that required particular frequency specifications. The project had been difficult for the employer and by the fall of 2021 was on its "last leg." Transcript at 29.

(3) In September 2021, following presentations claimant made in team meetings regarding proposed specifications for the project, claimant submitted to his manager frequency specifications for the project. Unbeknownst to claimant, his manager and the lead engineer did not think the frequency specifications claimant submitted would work.

(4) Around the beginning of October 2021, claimant found a picture on a break room refrigerator depicting a man hanging from a noose in a tree with a caption that said “welcome to North Carolina.” Transcript at 6. Claimant was Black and was the only person who worked for the employer from North Carolina. The racist picture made claimant feel targeted and afraid.

(5) Claimant complained to the employer about the racist picture. The employer began an investigation, and initially questioned whether the picture was inappropriate because the man depicted in the picture appeared to be white. The appearance of the man in the picture made claimant “think it was targeting [him] even more” because claimant had a light complexion and “[e]verybody says [he] look[ed] white.” Transcript at 12-13. After claimant informed the employer that he “wasn’t able to be convinced” that the picture was not racist, the employer discharged the worker who placed the picture on the refrigerator. Transcript at 13. Claimant believed the employer only discharged the worker because of claimant’s insistence that the picture was racist.

(6) On or around October 20, 2021, claimant’s manager approved purchasing the project equipment at claimant’s frequency specifications and instructed claimant to sign the purchase order. It was unusual for anyone other than claimant’s manager to sign purchase orders. Nevertheless, claimant signed the purchase order and, thereafter, the employer received the equipment. The equipment cost \$30,000 and the employer had five days to return the equipment for a refund if it did not work. Claimant wanted to test the equipment promptly upon receipt so that the employer could get a refund if it did not work. However, claimant needed the assistance of his manager and the lead engineer to do the testing. Those individuals did not make themselves available for the testing during the five-day return window. At some point after the five days expired, the manager and lead engineer agreed to assist claimant with the testing. The testing confirmed that the equipment worked at the frequency specifications claimant had submitted.

(7) Claimant began to suspect that the employer was intentionally setting him up to fail because of his insistence regarding the racist picture. Claimant raised this concern with the employer’s human resources (H.R.) manager. The H.R. manager arranged for claimant to meet with her assistant and to meet separately with his manager. In early January 2022, these meetings occurred. In the meetings, the H.R. assistant and claimant’s manager told claimant that he was not being set up to fail.

(8) Claimant continued to have concerns that he was being set up to fail. Claimant requested a meeting with the H.R. manager to discuss the matter, which the H.R. manager scheduled for the weekend before January 17, 2022. However, the meeting “fell off the outlook schedule” and claimant felt he “kept getting . . . ignored.” Transcript at 16.

(9) On January 17, 2022, claimant met with his manager and learned that the manager thought the equipment would not work at claimant’s frequency specifications. When claimant learned that the manager thought the equipment would not work, he believed it confirmed his fear that he was being “sabotaged.” Transcript at 5. Claimant reasoned this was the case because he had “put [his] name on”

the equipment costing \$30,000, the manager thought it would not work, the manager waited until after the five-day refund period expired to test the equipment, and if the testing confirmed the equipment did not work, claimant could be blamed for the project's failure. Transcript at 6. Claimant thought the alleged sabotage was retaliation for his complaining about the racist picture. Upon learning on January 17, 2022 that the manager thought the equipment would not work using claimant's frequency specifications, claimant quit working for the employer.

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.

The order under review concluded that claimant quit work without good cause because, while claimant's situation may have been grave, he did not pursue reasonable alternatives prior to voluntarily leaving work. Order No 22-UI-187733 at 3-4. The record does not support the order's conclusion that claimant quit work without good cause.

Claimant quit work with good cause. The record demonstrates that claimant faced a grave situation. The record evidence is sufficient to conclude that a reasonable and prudent person would determine, as claimant did, that they were being set up to fail. This is because claimant had, at the direction of his manager, signed the purchase order for the equipment costing \$30,000, it was unusual for anyone other than claimant's manager to sign purchase orders, his manager thought the equipment would not work at claimant's specifications, the manager waited until after the five-day refund period expired to test the equipment, and it is plausible that if the testing had ultimately confirmed that the equipment did not work, the employer could blame claimant for the failure of the project, which was already on its "last leg." Transcript at 29.

Furthermore, that a reasonable and prudent person in claimant's situation would feel sabotaged under the circumstances is bolstered by the fact that before claimant's manager instructed claimant to sign for the purchase of the equipment, claimant had complained about the racist picture and the employer ultimately discharged the worker responsible for the picture only after claimant insisted that the picture was inappropriate. Under these circumstances, a reasonable and prudent person in claimant's position could reasonably conclude that they were being positioned to take the blame for equipment that did not work in retaliation for making a complaint about racism that resulted in the discharge of another worker. At hearing, the employer's witnesses testified that it was commonplace to order and test questionable equipment and that they did not test the equipment claimant signed for during the five-day refund window because of the press of other business. Transcript at 24-25, 33-34. While it is entirely possible that the employer did not intend to sabotage claimant or subject him to retaliation, on this record,

claimant's concerns were objectively reasonable. Accordingly, claimant's reason for voluntarily leaving work was grave.

The record also shows that claimant had no reasonable alternative but to leave work when he did. The record shows that in early January 2022, the employer's H.R. assistant and claimant's manager held separate meetings with claimant and reassured him that he was not being set up to fail. However, claimant's concerns persisted and when he requested a meeting with the H.R. manager, a meeting was initially scheduled for the weekend before January 17, 2022 but then it "fell off the outlook schedule" and claimant felt he "kept getting . . . ignored." Transcript at 16. Further, after receiving the reassurances in the early January 2022 meetings that the employer was not setting claimant up to fail, claimant met with his manager on January 17, 2022 and learned that the manager never thought the equipment claimant had signed for would work. Claimant reasonably believed that this confirmed his fear that he was being "sabotaged." Transcript at 5. In light of these circumstances, it would have been futile for claimant to seek further reassurances from the employer before quitting on January 17, 2022. Because seeking further assurances from the employer was not a reasonable alternative to voluntarily leaving work, claimant had no reasonable alternative but to leave work when he did on January 17, 2022.

Claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-187733 is set aside, as outlined above.

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

DATE of Service: June 10, 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.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.