

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0394

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 28, 2020, 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 August 30, 2020 (decision # 103748). Claimant filed a timely request for hearing. On March 14, 2022, ALJ Demarest conducted a hearing, at which the employer failed to appear, and issued Order No. 22-UI-188570, affirming decision # 103748. On March 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her March 21, 2022 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 her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019).

EAB considered claimant's April 20, 2022 written argument when reaching this decision.

FINDINGS OF FACT: (1) Avamere Health Services of Rogue Va and its predecessor employed claimant from November 15, 2004 until September 1, 2020, last as an office manager.

(2) Claimant worked full-time for the employer, five days per week, and earned \$24 per hour. Her commute to and from her jobsite totaled 50 miles. Other than expenses associated with her commute, claimant's work for the employer did not require her to incur any additional costs.

(3) On March 2, 2019, the employer hired a new nursing director. Over the next two months, the nursing director spoke negatively about claimant to claimant's coworkers "behind [claimant's] back." Transcript at 15. Claimant overheard one or more of these conversations and felt "abuse[d] and harass[ed]" by the nursing director. Transcript at 8.

(4) On May 20, 2019, claimant complained to the employer's then-administrator, T.V., about the nursing director's behavior. In response, T.V. said nothing to claimant and "dismissed [her complaint] without investigation." Audio Record at 17:42. Claimant decided to ignore the situation with the nursing director despite the "mental pain and anguish" it caused her, and instead focus on doing her best to continue her work for the employer. Transcript at 22.

(5) On May 25, 2020, claimant overheard a conversation between the nursing director and a coworker where the nursing director told the coworker that claimant was stealing money from the employer. Later, claimant confronted the director of nursing and asked, "is [there] something that you need to tell me?" Transcript at 16. In response, the nursing director told claimant, "Oh no, no, you[re] great[.]" Transcript at 16.

(6) Later that day, the employer notified claimant that her work hours would be reduced from 40 hour per week to 25 hours per week. Claimant acknowledged the change to her hours, but did not ask the reason for the change, and the employer did not offer her a reason. Claimant believed that in light of the issues she had been having with the nursing director, the reduction in hours was a retaliatory attempt by the employer to force her to resign and, as a result, claimant decided to quit. But for the reduction in hours, claimant would not have decided to quit her job. Claimant instead would have continued with her job and again asked the employer to assist with resolving the situation with the nursing director.

(7) On July 14, 2020, claimant met with the employer's new administrator, J.M., to provide notice of her intent to resign. J.M. and claimant agreed that her last day of work would be September 1, 2020. During the conversation, claimant brought up her situation with the nursing director, but "didn't want to be complaining" because she recognized that J.M. and the nursing director were good friends and that she believed J.M. "would not resolve anything" due to their friendship. Transcript at 9.

(8) On September 1, 2020, claimant worked her last day for the employer.

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) (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). 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 who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant quit work because of the treatment she received from the nursing director and because the employer had reduced her hours, which claimant believed was retaliation for her situation with the nursing director. At hearing, however, claimant testified that it was not until the employer's May 25,

2020 notification that they were reducing her hours that claimant felt like the employer was forcing her to resign due to her situation with the nursing director, and decided to quit. Transcript at 12. Had that notification not occurred, claimant would have remained with the employer and asked the employer to help her pursue a resolution to her issue with the nursing director. Thus, the question presented is whether claimant's situation with the nursing director caused the employer to retaliate against her by reducing her hours (as claimant believed), such that this retaliatory act, coupled with claimant's unpleasant situation with the nursing director, created a situation that left claimant no reasonable alternative but to quit.

The record shows that claimant was unaware of the reason(s) why the employer had decided to reduce her hours and did not seek an explanation. Therefore, claimant has failed to show that her reduction in hours was retaliation related to her situation with the nursing director, and not some other legitimate business reason for which a reduction in hours might occur. Absent such a showing, what remains is a record demonstrating that at the time claimant decided to quit, she did not face a grave situation and had a reasonable alternative to quitting – seeking the assistance of the employer to resolve her situation with the nursing director. When claimant provided her July 14, 2020 resignation notice, she discussed the situation she was having with the nursing director to a new administrator, and not the administrator who had previously dismissed her concerns on May 20, 2019, and did not give the new administrator an opportunity to try to resolve the situation.

To the extent claimant quit work solely due to her reduction in hours, claimant also failed to establish good cause. Although the record shows that claimant's hours were reduced from 40 hours per week to 25 hours per week, claimant offered no evidence to suggest that the reduction of hours would have substantially interfered with her return to full time work, and the record does not otherwise suggest that this would have been the case. Furthermore, the record shows that the only costs claimant incurred related to her work were the commuter costs associated with her 50-mile roundtrip journey to and from work each day. Claimant offered no additional evidence showing the amount these commuter costs actually entailed despite her burden to do so. Absent such evidence, and given that claimant's rate of pay was \$24 per hour earning her \$600 per week in a 25-hour work week, the record shows that claimant's cost of working for the employer after her reduction in hours likely did not exceed the amount of remuneration she received. As such, claimant has not met her burden to show that she quit for good cause pursuant to OAR 471-030-0038(5)(e).

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits effective August 30, 2020.

DECISION: Order No. 22-UI-188570 is affirmed.

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

DATE of Service: June 6, 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 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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