

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0399

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 30, 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 December 5, 2021 (decision # 95535). Claimant filed a timely request for hearing. On March 17, 2022, ALJ Kaneshiro conducted a hearing at which the employer failed to appear, and issued Order No. 22-UI-189025, affirming decision # 95535. On March 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of an email statement, and accompanying text message screenshot, that claimant attempted to email for evidentiary consideration to the Office of Administrative Hearings (OAH), prior to March 17, 2022 hearing. For reasons that are unknown, the email was not received by OAH. Because this evidence is relevant and material, and is otherwise necessary to complete the record, it has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Dairy Queen 17468 employed claimant, last as a manager-in-training, from February 2017 until December 8, 2021. During her employment, claimant's supervisor would mainly communicate to claimant via text message, which often resulted in communications between the two being "misconstrued." Transcript at 15.

(2) Prior to 2020, claimant was diagnosed with bipolar disorder and anxiety. Claimant's conditions caused her to "take things very personally" in situations where she felt like she was put on the defensive,

and to act impulsively in response to those situations. Transcript at 17. Claimant was prescribed medication to treat her conditions.

(3) In late October 2021, the employer promoted claimant to manager-in-training. Despite the promotion, claimant received “zero training” for the position. Transcript at 10. For the next two months, claimant consistently worked longer than her scheduled hours and, during one three-week period, went without a day off. Claimant also skipped her scheduled breaks often because she was concerned about the reliability of some of her coworkers. Claimant attempted many times to communicate with her supervisor that she did not feel like she could “handle the position” without change and that it was affecting her mental health. Transcript at 17, 19-20. The supervisor would tell claimant, “we will talk about it,” but no conversation about claimant’s work situation ever occurred. Transcript at 18. Claimant began to “severely [struggle]” with her mental health conditions due to exhaustion caused by her long work hours and the lack of change in claimant’s work environment. EAB Exhibit 1 at 3. Claimant’s exhaustion would often cause her to fall asleep when she got home without first taking her medication, further exacerbating her conditions.

(4) On December 8, 2021, claimant texted her supervisor and told them that a coworker had decided to quit over a communication and scheduling grievance. Claimant’s supervisor responded, “We should not be babysitting people. They are responsible for their job and their shifts. I will not take any attitude or crap like this again. She is an adult, should not be a complainer, ask one more time if she will stay or I will change her schedule.” Transcript at 9-10. Claimant became “anxious” when she received the supervisor’s “hostile” response, and believed that the supervisor’s hostility was directed toward claimant. Transcript at 17. In a “defend myself message” that was “impulsive,” claimant replied to the supervisor that she thought their message had been hostile and that she did not appreciate it. Transcript at 17, 19. Claimant then told the supervisor to “take [claimant] off the schedule as well” and, later, “Yes, I can use my experience elsewhere. Thank you . . . for the opportunity[.]” Transcript at 10, 13. After first indicating a desire to speak with claimant about the situation, the supervisor subsequently told claimant, “Please don’t come back to [the employer], ever.” Transcript at 7. Claimant did not work for the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

Nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The record shows that claimant’s work separation resulted from a December 8, 2021 text conversation between her supervisor and claimant. It can be inferred from the record that prior to this communication, claimant was willing to continue working for the employer and the employer had continuing work available for claimant to perform. Although claimant may have misconstrued that the supervisor’s initial hostility in that conversation was directed toward claimant, the record shows that claimant subsequently initiated the work separation when she told the supervisor to take her off the work schedule and that she could “use [her] experience elsewhere” and thanked them for the opportunity. Under these circumstances, claimant’s statements to the supervisor objectively conveyed that she was no longer

willing to work for the employer despite the availability of continuing work. The supervisor's subsequent statement to claimant to "not come back . . . ever" operated as an acceptance of claimant's decision to voluntarily quit. As such, the nature of claimant's work separation is a voluntarily leaving.

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

The order under view concluded that claimant quit work without good cause because although she believed that her supervisor had sent her a hostile text message on December 8, 2021, no reasonable and prudent person, who suffered from bipolar disorder and anxiety, would have similarly felt that under these circumstances they had no reasonable alternative but to quit. Order No. 22-UI-189025 at 3-4. The record does not support this conclusion.

The record shows that after receiving the supervisor's initial December 8, 2021 response message, which included the statement that the supervisor "will not take any attitude or crap like this again," claimant sincerely believed that the supervisor's hostility was being directed toward claimant. Claimant's internalization of the supervisor's hostile text was brought about by the initial anxiety she felt when she read the text and was otherwise consistent with the record evidence showing that her mental health conditions caused her to "take things very personally" when she perceived she was being placed on the defensive.

Moreover, claimant's defensive reaction to the supervisor's response message and her impulsive decision to quit work in response must be considered in the context of the other circumstances that occurred in the two months that lead up to the December 8, 2021 communication. During those two months, the record shows that claimant had "severely struggled" with her mental health due to the long work hours, lack of time off, and the lack of reliable support she was receiving from coworkers at work. Claimant's struggles were compounded by her frequent failure to take her medication due to her work-related exhaustion and her supervisor's failure to speak with claimant regarding all of her concerns, despite repeatedly telling her that they would make time to do so. In light of the totality of the circumstances, claimant established by a preponderance of the evidence that it was reasonable for her to believe, as an individual suffering from bipolar disorder and anxiety, that she faced a grave situation at work. Furthermore, given the uncontroverted record evidence showing that claimant's supervisor failed to meet with claimant to discuss her concerns for the two months preceding her departure, claimant established that a further attempt to meet with the supervisor would have been futile and that she therefore had no reasonable alternatives but to leave work when she did.

For these reasons, 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-189025 is set aside, as outlined above.

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

DATE of Service: June 7, 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.

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 desisyong ito.

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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