

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0419

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 31, 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 October 11, 2020 (decision # 131308). Claimant filed a timely request for hearing. On March 21, 2022, ALJ Davis conducted a hearing, and on March 22, 2022 issued Order No. 22-UI-189357, affirming decision # 131308. On March 28, 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) Claimant was employed by HCSG West LLC from September 16, 2019 until October 12, 2020. The employer was contracted to provide employees to a nursing home facility. Claimant worked at the nursing home facility as a housekeeper.

(2) About a month before claimant quit work, claimant's supervisor accidentally scheduled claimant and her co-worker to work at the same time. Claimant's supervisor "stomped around" and was agitated. Transcript at 11.

(3) Approximately one to two weeks before quitting work, claimant worked an extra hour because it had been busy. Claimant's supervisor at the nursing home facility walked briskly toward claimant in an "aggressive" manner, approached her and pointed his finger at her face, stating, "Don't do it again." Claimant felt the supervisor acted inappropriately. Transcript at 6. Claimant spoke about the incident to other workers at the facility where she worked, including the head nurse. Transcript at 8. Claimant also

reported the incident to an office manager at the facility, but not to the employer's human resources department. Transcript at 9, 14-15.

(4) Claimant was dissatisfied that her supervisor at the nursing home facility "didn't stand up" for claimant when the caregivers at the facility were not doing their job. Transcript at 11. Claimant was also concerned that her supervisor at the nursing home facility was flirtatious and inappropriate with an aide that worked at the nursing home. Claimant also was unhappy the housekeeping department never received an appreciation, such as pizza, when other buildings received an appreciation. Transcript at 18-19.

(5) The employer's human resources department's contact information was posted by the time clock at the nursing home facility. The employer completed a monthly compliance inspection with a photo verifying that the human resource contact information remained posted by the time clock. Transcript at 16. The employer visited the nursing home facility about every two to three weeks. Transcript at 14.

(6) Claimant did not express her concerns about her working environment to her employer's human resources department or to the on-site supervisor's supervisor.

CONCLUSIONS AND REASONS: Claimant 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) (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.

Claimant testified she quit work because she faced a hostile work environment due to her on-site manager's inappropriate actions. A manager's behavior toward an employee may be good cause to leave work if a claimant shows they were subjected to ongoing "oppression" or "abuse" in the workplace. See *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the work from unemployment benefits"; the law "does not impose upon the employee the one-dimensional motivation of Adam Smith's 'economic man'"). Claimant described two incidents in which the supervisor appeared angry and "stomped" around. During one of the incidents the supervisor aggressively pointed his finger in claimant's face and told her, "Don't do it again," when claimant worked an extra hour. Claimant also described a work setting in which the supervisor was flirtatious with an aide and did not support claimant when caregivers were not doing their job and did not show appreciation for claimant and other housekeeping staff. While claimant understandably was upset, the record does not show that the manager yelled, used foul language, threatened claimant, or otherwise engaged in offensive conduct that was so frequent or severe as to rise to the level of being "abusive" or "oppressive" as established by cases applying the *McPherson* standard.

Moreover, even if claimant did face a grave situation at work because of her on-site supervisor's behavior, claimant did not exercise reasonable alternatives prior to quitting work such as contacting the human resources department for her employer, contacting her on-site supervisor's supervisor, or meeting with her supervisor at HCSG to discuss her concerns about her working environment.

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 22-UI-189357 is affirmed.

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

DATE of Service: June 13, 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

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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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