

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0495

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 19, 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 October 31, 2021 (decision # 121736). Claimant filed a timely request for hearing. On March 29, 2022, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 7, 2022 at 9:30 a.m. On April 7, 2022, ALJ Lucas conducted a hearing, and on April 13, 2022 issued Order No. 22-UI-191193, affirming decision # 121736. On April 20, 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 him 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.

In his written argument, claimant asserted that the hearing notice he received was insufficient because the short timeframe between the date the notice was mailed by OAH and the time he received it left him with insufficient time to submit additional evidentiary exhibits. Claimant's Written Argument at 4. The record does not support this argument. ORS 471-040-0015(1) (August 1, 2004) requires only that notice of hearing to the claimant setting forth the time, date, place, and issue(s), be mailed at least five days in advance of the hearing. The record shows that OAH mailed notice of hearing to claimant on March 29, 2022, which was more than five days prior to the April 7, 2022 hearing that claimant attended. Although claimant asserted that he did not have enough time to provide any additional evidentiary exhibits to the employer after he received the notice, claimant did not indicate *when* he received the hearing notice, nor did he explain why he lacked sufficient time to provide additional evidentiary exhibits to the employer between when claimant received the notice and when the hearing was held, nor did he request to reschedule the hearing or to hold the hearing record open. Therefore, claimant has not shown that he lacked sufficient notice to submit additional documentary evidence into the hearing record.

FINDINGS OF FACT: (1) Bay Area Enterprises employed claimant as a job developer from September 23, 2021 to November 3, 2021. Claimant was licensed by the State of Oregon as a certified employment specialist. In his capacity as a job developer, claimant worked with clients with developmental disabilities to assist them with finding job opportunities.

(2) In August 28, 2021, claimant was diagnosed with coronary heart disease and was prescribed medication to treat his condition. At the time of his diagnosis, claimant's medical provider advised claimant to avoid stressful situations.

(3) Consistent with Oregon statutes,¹ the employer maintained a policy that classified claimant as a mandatory reporter of abuse against developmentally disabled persons. In those circumstances where claimant had reasonable cause to believe that a developmentally disabled adult who was receiving services had been abused, claimant's mandatory reporter classification required him to immediately report the abuse to a community developmental disability program and local law enforcement. The employer's policy identified potential forms of abuse that claimant might encounter, including financial exploitation. The employer trained claimant consistent with this policy on his first day of employment, and claimant acknowledged in writing that he had received training on the mandatory reporting requirements.

(4) Claimant found his work environment to be "stressful" because his working relationship with his direct supervisor was poor. Transcript at 13. Claimant believed his direct supervisor had created a hostile work environment by making comments claimant believed were racist and ageist and by repeatedly using profanities in claimant's presence.

(5) On November 1, 2021, claimant was informed that one of the employer's client's believed that the client's employer was "short[ing]" the client on their paychecks. Transcript at 9-10. Claimant was concerned that this allegation might be an instance of financial exploitation requiring a mandatory report, but "was not 100% sure." Transcript at 12. Because of his uncertainty, and because he had only been working for the employer for about a month, claimant decided to seek guidance from his direct supervisor.

(6) On November 3, 2021, claimant had a telephone conversation with his supervisor about his concerns regarding the client's allegation of financial exploitation and the need to file a mandatory report. The supervisor told claimant that his concerns were not part of his employment duties, which claimant disagreed with. The supervisor accused claimant of yelling at them during the conversation, to which claimant replied, "I'm not yelling at you, I'm arguing with you." Transcript at 24. When the supervisor told claimant that they were tired of him arguing with them, claimant responded that the issue was important. The supervisor told claimant that he should talk to the employer's executive director, and hung up the phone.

(7) Later that day, claimant emailed his resignation to the executive director. Claimant resigned for multiple reasons, including the "stressful" work environment created by his direct supervisor as a result of their "gutter language," the impact the work environment was having on his health, his belief that the alleged financial exploitation incident required a mandatory report which the direct supervisor had

¹ See ORS 430.765.

“slough[ed] off, and his concerns that he might risk his professional certification if he did not report the suspected abuse. Transcript at 22, 23. After resigning, claimant filed a report of the suspected abuse with the local developmental disabilities office.

(8) Prior to quitting, claimant did not notify the employer’s human resources (HR) department about the client who was allegedly financially exploited, or about his interaction with the supervisor on November 3, 2021. Had he done so, the HR department would have ensured that a report was filed with the proper agency and would have addressed the supervisor’s decision to hang up on claimant during the November 3, 2021 phone call.

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) (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). Claimant had coronary heart disease, 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 voluntarily left work because of the “stressful” work environment created by certain comments his supervisor made that claimant believed were racist and ageist, and because of the supervisor’s actions on November 3, 2021 when they failed to act on claimant’s concerns about a possible financial exploitation incident, and the necessity of reporting the incident, before hanging up on claimant. The record shows that claimant reasonably believed that that the supervisor’s actions placed not only his professional licensure at risk, but also potentially his health. Under these circumstances, any reasonable and prudent person suffering from coronary heart disease would have believed that they were facing a grave situation at work.

However, claimant had reasonable alternatives to quitting work when he did. The record shows that, prior to quitting, claimant could have notified either the employer’s executive director or the employer’s HR department about each of the situations he was facing related to his supervisor and provided them the opportunity to intervene. In fact, the preponderance of the evidence shows that had claimant raised his concerns about the conduct and actions of his supervisor with the HR department prior to quitting, the HR department would have ensured that a mandatory report on the financial exploitation matter was filed with the appropriate agency.² Likewise, the record shows that, more likely than not, the HR

² The record shows that claimant also had the reasonable alternative of making the mandatory report himself. Although claimant testified to his lack of “100%” certainty that the financial exploitation allegation required a mandatory report, the record shows that the employer expected their job developers to file mandatory reports where they had reasonable cause to believe that financial exploitation had occurred. Given claimant’s protestations on this issue and his ultimate decision to file the mandatory report after he quit, it is reasonable to conclude that claimant had the reasonable alternative of filing the report prior to quitting.

department would have addressed the supervisor's behavior in hanging up on claimant and likely investigated claimant's hostile work environment claims. By failing to take advantage of these reasonable alternatives to quitting, claimant failed to act as a reasonable and prudent person suffering from coronary heart disease would have acted, and he therefore failed to show that he quit work with good cause.

For these reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective October 31, 2021.

DECISION: Order No. 22-UI-191193 is affirmed.

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

DATE of Service: July 8, 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.

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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.