

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0511

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2022, 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 February 13, 2022 (decision # 131845). Claimant filed a timely request for hearing. On April 19, 2022, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on April 21, 2022 issued Order No. 22-UI-191853, affirming decision # 131845. On April 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Inhale Exhale Smoke Shop Inc. employed claimant, most recently as a store manager, from December 17, 2018 until February 18, 2022. The employer's store sold vaping supplies and cannabis paraphernalia.

(2) Claimant suffered from long-term bipolar disorder, post-traumatic stress disorder (PTSD), and postpartum depression. Claimant took prescribed medication and saw therapists on a regular basis to treat those conditions.

(3) On February 3, 2020, the employer promoted claimant from store clerk to store manager. Claimant received no training for the store manager position and struggled to perform the job well.

(4) On January 1, 2021, a new tax on nicotine vape products went into effect. Claimant did not receive training on how to apply the tax and had no accounting or bookkeeping experience. However, the employer's owner required claimant to account for the tax in the store's budget for items bought at wholesale and incorporate the tax into the retail prices of the items the store sold. The owner also required claimant to prepare spreadsheets and supporting documentation showing how the store had applied the tax, and then give those materials to the store's accountant. Claimant often performed these tasks incorrectly. The vape tax also led the owner to reduce the store's inventory budget, which caused claimant to order less inventory and struggle to keep the store's shelves stocked.

(5) The owner frequently criticized claimant harshly about performing the vape tax duties incorrectly and her difficulties with inventory. Claimant was “constantly . . . in tears from [the owner]” because of his harsh criticisms. Transcript at 31. On numerous occasions, claimant asked for help and informed the owner that she felt untrained and unprepared. However, the owner was not responsive to claimant’s requests for help. On one occasion after claimant asked for help, the owner stated that claimant was unwilling to learn and “fuck[ed] off all the time.” Transcript at 17. The owner also “would constantly start yelling at [claimant] over the phone or in person,” and the two argued with each other in front of customers on a regular basis. Transcript at 33.

(6) Claimant conferred regularly with the store’s accountant to try to improve the mistakes she made regarding the vape tax spreadsheets and supporting documentation. However, the accountant rarely helped claimant improve because, instead of explaining to claimant her mistakes, the accountant typically only told claimant to “send me what you got and I’ll see what I can do[.]” Transcript at 24.

(7) The owner’s treatment of claimant progressively worsened over time. On December 14, 2021, claimant requested that the owner demote her from store manager and return her to her former position as store clerk. The owner posted an ad for the store manager job but no one applied. The owner also complained to claimant about the stress it would cause him to manage the store again. Claimant decided to withdraw her demotion request and informed the owner that she would remain in the manager position, but asked the owner to take over the preparation of the vape tax-related spreadsheets and supporting documentation. The owner agreed but thereafter failed to actually take over the vape tax responsibilities.

(8) On February 18, 2022, the owner called claimant to a meeting. In the meeting, the owner told claimant that because she did not listen to him and “was doing everything wrong,” the owner intended to demote claimant to a store clerk and promote a coworker to the store manager position. Transcript at 19. The owner explained that following her demotion claimant was expected to continue to do all the store manager tasks while the new store manager trained.

(9) Claimant called her husband and the two of them decided that it was too stressful for claimant to continue to work for the employer, and that claimant “couldn’t mentally take the breakdown and the belittlement” from the owner any longer. Transcript at 30. Claimant determined, and her husband agreed, that continuing to work for the employer placed her mental health at risk and she “couldn’t handle it anymore.” Transcript at 40. Claimant informed the coworker of their promotion, then left the employer’s store and never worked for the employer again. Claimant did not consult her therapists before leaving work.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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).

Claimant had bipolar disorder, PTSD, and postpartum depression, long-term mental impairments as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for their employer for an additional period of time.

Claimant faced a grave situation when she quit working for the employer on February 18, 2022. The record shows that claimant received no training for the store manager position and struggled to perform the job well. These difficulties were compounded after the vape tax went into effect in January 2021, because claimant, who had received no training on how to apply the tax and had no accounting or bookkeeping experience, was then tasked with accounting for the tax and frequently performed those tasks incorrectly. Claimant also struggled to keep the stores shelves stocked due to inventory budget changes. Because of these difficulties, the owner harshly criticized claimant on a frequent basis, which included the owner constantly yelling at claimant, using foul language, and accusing claimant of being unwilling to learn.

The owner's treatment of claimant worsened over time, and claimant decided it was too stressful to continue to work when she learned that the owner intended to demote her but expected her to continue to do the store manager tasks while the new store manager trained. On the day claimant quit, the owner's progressively worsening treatment led her to conclude, with the support of her husband, that her mental health was at risk and that she "couldn't handle it anymore." Transcript at 40. Given claimant's profound difficulties carrying out the responsibilities of store manager and the progressively worsening abusive treatment she received from the owner, when viewed in light of, claimant established that a reasonable and prudent person suffering from her impairments would have quit work if there were no reasonable alternative.

Claimant pursued reasonable alternatives before quitting work but to no avail. On numerous occasions over the course of her employment, claimant informed the owner that she felt untrained and unprepared, and asked for help but the owner was not responsive to claimant's requests. Claimant conferred regularly with the store's accountant in an effort to improve the mistakes she made regarding the vape tax spreadsheets and supporting documentation but the accountant rarely helped claimant improve. Claimant ultimately asked the owner to take over preparing the vape tax-related spreadsheets and supporting documentation and, although the owner initially agreed to do so, he failed to actually take over these responsibilities. Although claimant quit without first consulting her therapists, the record shows that they likely would have endorsed her decision to quit because of the degree of risk to claimant's mental health.

Finally, although the owner announced on February 18, 2022, that he intended to demote claimant to a store clerk, remaining employed in the demoted status was not a reasonable alternative to quitting. The owner expected claimant to continue to do the store manager tasks while the new store manager trained, and the impacts of the owner's abusive treatment on claimant's mental health were of such severity that it was not possible for claimant to continue to work for the owner in any capacity, whether as store manager or in a demoted position.

For these reasons, claimant established that no reasonable and prudent person with the characteristics and qualities of an individual with her impairments would have continued to work for the employer for

an additional period of time. Claimant therefore quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-191853 is set aside, as outlined above.

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

DATE of Service: July 15, 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.

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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 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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