

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0525

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 11, 2021, 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 June 20, 2021 (decision # 130027). Claimant filed a timely request for hearing. On April 14, 2022, ALJ Blam-Linville conducted a hearing, and on April 15, 2022 issued Order No. 22-UI-191467, affirming decision # 130027. On April 29, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Mirinae Enterprise LLC employed claimant from April 6, 2020 until June 26, 2021.

(2) Claimant worked the second shift at the employer's gas station, and was a cashier and assistant manager. About once a month over the course of claimant's employment, the worker scheduled to work the third shift and relieve claimant did not report to work and no other worker was available to cover the third shift. On each of these occasions, the employer's owner asked claimant to cover the third shift.

(3) Claimant always agreed to cover the third shift on these occasions out of a sense of duty because he was assistant manager, and because he feared the employer would terminate his employment if he refused. However, claimant was not in danger of termination if he refused because the employer was lenient about enforcing their rules, and the employer's owner had a personal practice in which she would not "fire anybody." Transcript at 21. Claimant was aware that the employer was lenient about enforcing their rules and did not discharge coworkers, including those who failed to report for their shifts, which was a source of frustration for claimant because he believed it encouraged the third shift worker not to report.

(4) On June 26, 2021, claimant received a ride to work from his mother. As the two pulled into the employer's parking lot, they came to a stop behind a customer's vehicle and inadvertently prevented the vehicle from backing up. After a few minutes, claimant's manager exited the gas station and yelled angrily at claimant's mother to "move the [fuck]ing car right now." Transcript at 6. The manager had

never before yelled at claimant or his mother, and claimant had had no previous difficulties with the manager. Claimant thought the manager's outburst was disrespectful toward his mother and stated to the manager, "I should just quit" to which the manager responded, "[G]o ahead and quit." Transcript at 6-7. Claimant decided to quit working for the employer that day and called the owner to inform her of his decision. The owner asked claimant to reconsider but claimant stated he would not do so.

(5) On June 28, 2021, the owner called claimant and asked him to work for the employer again. Claimant agreed to return to the gas station on July 7, 2021, which is when he intended to pick up his final paycheck. When claimant arrived at the gas station on that date, the owner asked claimant and the manager to apologize to each other in order to create a cordial work atmosphere. The manager apologized to claimant. However, claimant refused to apologize because he felt he did not owe the manager an apology. Claimant then grabbed his final paycheck and left the employer's gas station.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature and Date 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

Claimant voluntarily left work on June 26, 2021. On that date, after claimant's manager yelled at claimant's mother, claimant stated to the manager, "I should just quit" to which the manager responded, "[G]o ahead and quit." Transcript at 6-7. Claimant then decided to quit working for the employer and called the employer's owner that same day to inform her of his decision. During their phone conversation, the owner asked claimant to reconsider his decision to quit but claimant stated he would not do so. This evidence shows that claimant voluntarily quit on June 26, 2021 because on that date, he severed the continuing relationship between himself and the employer by becoming unwilling to continue to work for the employer despite the availability of continuing work.¹ Accordingly, the record shows that the nature of the work separation was a voluntary leaving that occurred on June 26, 2021.

Voluntary Leaving. 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.

¹ Although claimant and the employer had a subsequent call on June 28, 2021, where claimant agreed to return to the gas station on July 7, 2021, that occurred after claimant had severed the employment relationship on June 26, 2021. Therefore, the events of July 7, 2021 in which claimant refused to apologize and left the gas station are beyond the scope of this appeal, except to the extent that they shed light on claimant's June 26, 2021 voluntary leaving.

The primary reason claimant quit working for the employer on June 26, 2021 was because of the incident in which the manager yelled at claimant's mother to "move the [fuck]ing car right now." Transcript at 6. The manager's outburst was improper. Nevertheless, claimant did not meet his burden to show that the manager's treatment of him or his mother on that occasion was of such gravity that he had no reasonable alternative but to quit work when he did. The record shows that the situation was not grave because the manager's conduct was a single occurrence and not a pattern of abuse or mistreatment given that the manager had never before yelled at claimant or his mother and claimant had had no previous difficulties with the manager. Further, claimant failed to pursue reasonable alternatives prior to quitting work on June 26, 2021. Claimant could have voiced his concern about the manager's conduct to the owner. Had he done so, it is more likely than not that the owner would have addressed the issue with the manager, and the manager would have apologized and agreed to not yell or direct foul language at claimant's mother again. The record supports that this alternative to quitting would not have been futile because after claimant quit on June 26, 2021, the owner attempted to have claimant and the manager apologize to each other July 7, 2021 in order to promote a cordial work atmosphere. Although claimant withheld an apology because he felt he had nothing to apologize for, the manager apologized to claimant for her conduct.

Another reason claimant quit working for the employer on June 26, 2021 was because the employer had asked claimant to cover the third shift on a recurring basis. Claimant failed to meet his burden to show that this reason for quitting was of such gravity that he had no reasonable alternative but to quit on June 26, 2021. As to gravity, the record shows that the employer asked claimant to cover the third shift when the third shift worker did not report, which was about once a month over the course of their employment,² infrequent enough that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have quit work for that reason. Moreover, although claimant always agreed to cover the third shift when asked because of a sense of duty as assistant manager and because he feared the employer would terminate his employment if he refused, the record reflects that claimant did not risk being discharged if he refused. At hearing the owner repeatedly testified that she did not discharge her employees, and the record shows that claimant was aware that the employer was lenient about enforcing their rules and did not discharge employees. Transcript at 21-22, 25. For these reasons, the record shows claimant had the alternative of refusing to work the third shift when asked, and would not have been discharged or faced lesser discipline had he done so.

For these reasons, claimant voluntarily quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits effective June 20, 2021.

DECISION: Order No. 22-UI-191467 is affirmed.

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

² At hearing, claimant testified that he covered the third shift when the third shift worker did not report two or three times per week. Transcript at 13-14. In contrast, the owner testified that she asked claimant to cover the third shift about once a month. Transcript at 25. Viewed objectively, the evidence on the frequency claimant covered third shift was no more than equally balanced. Where the evidence is no more than equally balanced, the party with the burden of persuasion – here, claimant – has failed to satisfy their evidentiary burden. Consequently, on this disputed matter, EAB based its findings on the employer's evidence.

DATE of Service: July 20, 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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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