

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0552

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 1, 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 August 29, 2021 (decision # 121457). Claimant filed a timely request for hearing. On April 22, 2022, ALJ Murdock conducted a hearing at which the employer failed to appear, and on April 27, 2022 issued Order No. 22-UI-192360, affirming decision # 121457. On May 10, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) PeaceHealth employed claimant as a medical assistant to a health care provider ("the provider") at their Dexter, Oregon clinic from April 2014 until August 30, 2021.

(2) Beginning in December 2020, the provider began to openly comment about claimant not being vaccinated against COVID-19. The provider's actions included telling patients, in claimant's presence, that claimant was unvaccinated. Claimant felt that the patients would hassle claimant about her unvaccinated status. Claimant also felt harassed and pressured by the provider's actions, but she did not tell her manager because the provider and her manager were friends.

(3) The employer instituted a policy that required employees to be vaccinated against COVID-19 by August 31, 2021 or obtain an exemption based on medical or religious grounds. If an exemption was granted, the employer's policy allowed certain employees to transition to remote work if their work could be performed remotely. Claimant applied for a religious exemption, which the employer granted.

However, the employer required medical assistants to work in person with patients and, as a result, claimant was not able to transition to remote work. Due to her approved religious exemption and the unavailability of remote work, the employer planned to place claimant on administrative leave after August 31, 2021.

(4) On July 28, 2021, after claimant entered a patient's examination room, the provider told claimant that they and the patient had just been discussing "all the stupid [people] in the world not getting the vaccine," and when claimant said nothing in response, the provider then said to the patient, "It's the people being quiet . . . that aren't getting the vaccine." Transcript at 17. Claimant sent an email to the provider the next day stating that she thought their words to the patient were offensive, because the provider had informed the patient that claimant was not vaccinated and implied that claimant was stupid for being unvaccinated.

(5) On August 26, 2021, after the provider had already left work for the day, claimant entered the provider's office to water the provider's plants and close their blinds. While doing so, claimant noticed an email exchange on the provider's computer between the provider and claimant's manager. Claimant read the email exchange, which included statements indicating that unvaccinated employees were not "team players" and that they would "come crawling back [to the employer] with [their] tails between [their] legs." Transcript at 11. Prior to reading the emails, which claimant found "disturbing," claimant had neither intended to quit work nor to request a transfer to a different clinic. Transcript at 11.

(6) August 29, 2021, after "stew[ing] over" the email traffic she had read, claimant sent an email to several people, including the provider and her manager, expressing the difficulty she had faced during the past year and her reasons for choosing not to become vaccinated. Transcript at 6, 21. Claimant's email complained that the provider had told patients about her unvaccinated status and about the contents of the August 26, 2021 email traffic between the provider and claimant's manager. Claimant called the workplace a "hostile work environment," indicated that the provider had been "horrible to work for," and stated that her experiences had "added to [her] disdain for [the employer]" and that she "would never come back to [the Dexter] clinic, ever again, not even if you paid me double." Transcript at 10-11. Claimant concluded the email by stating that the employer "can either put me in the Cottage Grove clinic . . . or let me know in, a reasonable amount of time, where I need to be, or I will use my PTO to avoid this toxic work environment . . . [a]nd I will not tolerate any more . . . [and] I'm leaving my key so I can avoid any future interactions with [the provider]." Transcript at 12. Claimant took her key to the employer that day and left it on a desk. At the time she sent her August 29, 2021 email, claimant knew that the employer would not transfer her to the Cottage Grove clinic because she was unvaccinated.

(7) On August 30, 2021, a representative from the employer's human resources (HR) section called claimant and acknowledged what they believed was her August 29, 2021 email resignation. Claimant responded to the HR representative by disputing the characterization that she had resigned and "asked them to please put [her] in [the] Cottage Grove clinic, and they wouldn't do that." Transcript at 6.

(8) Claimant did not work for the employer again after August 30, 2021 despite the availability of continuing work at the Dexter clinic.

(9) Because she was “too nervous,” claimant never filed any complaints with the employer’s HR department to address her grievances. Transcript at 16.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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 the work separation between claimant and the employer occurred during a phone call between the parties on August 30, 2021, but was precipitated by claimant’s August 29, 2021 email to the employer. Claimant testified that she did not quit work during that August 30, 2021 call, but instead followed up on her August 29, 2021 request for a transfer to the employer’s Cottage Grove clinic, and that it was the employer who actually terminated her employment during the call. Transcript at 6, 7-8. However, claimant’s August 29, 2021 email, when read in context, reflects that claimant’s request to transfer was not a request at all, but a demand to be transferred and a clear refusal to work at the employer’s Dexter clinic again.

Given this context, it was reasonable for the employer to view claimant’s August 29, 2021 email as a resignation unless the employer agreed to transfer claimant to the Cottage Grove clinic. The employer refused to transfer claimant to the Cottage Grove clinic,¹ and instead accepted claimant’s resignation. Furthermore, the record shows that at the time the employer accepted claimant’s resignation, the employer had continuing work available for claimant to perform in their Dexter clinic. As such, because the record shows that claimant could have continued to work for the employer for an additional period of time, the nature of claimant’s work separation was a voluntary leaving that occurred on August 30, 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.

Claimant quit work because she felt the provider she worked for had harassed her for several months because she was unvaccinated. While the record shows that, more likely than not, claimant had

¹ The record shows that the employer was not in a position to grant claimant’s request to transfer to the Cottage Grove clinic because their vaccination policy precluded medical assistants like claimant from performing in person work with patients and remote work was not an option. Therefore, a transfer was not a viable option. More importantly, claimant testified that she knew the employer would not authorize a transfer to the Cottage Grove clinic because of her unvaccinated status. Transcript at 15.

experienced some level of ridicule from the employer, the record also shows that claimant did not intend to quit work or seek a transfer to the Cottage Grove clinic, until after she read the August 26, 2021 email traffic between the provider and her manager. Although claimant's circumstances were understandably unpleasant, they did not create a grave situation for purposes of OAR 471-030-0038(4) because claimant did not show that they exceeded mere unpleasantness by, for example, adversely affecting her work performance, her home life, or her health. As such, claimant did not meet her burden to show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work under these circumstances.

However, even if the record did show that the August 26, 2021 email exchange constituted a grave situation, claimant did not show that she had no reasonable alternative but to leave work. To the contrary, the record shows that claimant had the reasonable alternative of addressing her grievances with the employer's HR section, an option that claimant stated she "should have" done, and allowing them the opportunity to address her concerns. While claimant stated that she did not seek HR assistance because she was "too nervous" to do so, the record fails to show that claimant had reason to fear retaliation or any other negative consequences had she done so and, therefore she failed to show that approaching HR would not have been a reasonable alternative. Accordingly, because the record shows that claimant had a reasonable alternative to quitting work, claimant failed to show that she 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 August 29, 2021.

DECISION: Order No. 22-UI-192360 is affirmed.

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

DATE of Service: July 28, 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

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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