

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0812

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 74649). The employer filed a timely request for hearing. On July 12, 2022, ALJ Kaneshiro conducted a hearing, and on July 13, 2022 issued Order No. 22-UI-198099, reversing decision # 74649 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective February 6, 2022. On July 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB did not consider claimant's July 19, 2022 written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a). Claimant's August 1, 2022 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 August 1, 2022 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Bud Junction LLC employed claimant as a lead bud tender from approximately March 2019 until February 11, 2022.

(2) The employer also owned a hardware store that was housed in the same building as the store for which claimant worked. The owner's son worked at the hardware store.

(3) On February 10, 2022, while claimant was on his lunch break and away from the store, the store's manager called claimant to inform him that someone was assaulting the owner's son next door at the

hardware store. Claimant drove back and found that the assailant was the owner's grandson, which claimant did not know before he arrived. The grandson had confronted the owner's son (the grandson's uncle) over an alleged theft from the hardware store. During the altercation, the grandson repeatedly yelled obscenities at the owner's son and "pushed him away from the building." Transcript at 19. The owner's son left and claimant arrived to the scene a few minutes later.

(4) When claimant arrived, the owner's grandson was still upset and "got in [claimant's] face," arguing loudly with claimant as claimant tried to de-escalate the situation. Transcript at 8. The owner's grandson also told claimant that he intended to hit the owner's son in the face. Claimant then called the owner and convinced him to direct his grandson to leave the premises. Claimant continued to talk to the owner after the grandson left, but the owner "just wanted to argue with" claimant and refused to listen to claimant's concerns about the incident and the grandson's behavior. Transcript at 11–12.

(5) As a result of the incident with the owner's grandson, claimant had "extreme anxiety" and felt unsafe continuing to work for the employer, as he was concerned that the owner could send his grandson to attack claimant if the owner had an issue with claimant. Transcript at 11, 13.

(6) After the incident, claimant learned that the owner "had been harassing the other employees through emails, [and] through Facebook" regarding the incident. On February 11, 2022, claimant sent the owner a text message informing him that he was quitting. Claimant decided to quit because he no longer felt safe at work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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). 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 voluntarily quit work because he felt unsafe at work following an incident in which the owner's grandson engaged in a verbal and physical altercation with the owner's son, and then continued to argue with claimant while claimant tried to de-escalate. The order under review concluded that while this constituted a grave situation, claimant quit without good cause because he did not attempt to raise his concerns with the owner prior to quitting. Order No. 22-UI-198099 at 3. The record does not support this conclusion.

First, the record shows that claimant's situation was grave. The behavior in which the owner's grandson engaged—yelling, pushing, and using obscenities—coupled with the owner's seeming lack of concern about that behavior, shows that claimant's concerns about his own safety were reasonable under the circumstances. A reasonable and prudent person would not continue working for an employer if they

had a reasonable belief that the employer tolerated workplace aggression and violence. Therefore, claimant quit for a grave reason.

Next, contrary to the conclusion in the order under review, the record shows that claimant actually did attempt to address his concerns with the owner when they spoke shortly after the incident on February 10, 2022, but that the owner did not appear concerned about the situation. This, as well as the owner's other actions following the incident, such as harassing other employees about the incident, suggests that any additional efforts to obtain assurances from the owner that similar incidents would not happen again would be futile. Therefore, the record shows that claimant had no reasonable alternative but to quit when he did.

For the above reasons, claimant voluntarily quit work with good cause, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-198099 is set aside, as outlined above.

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

DATE of Service: October 21, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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