

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0817

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 21, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective May 15, 2022 (decision # 150248). Claimant filed a timely request for hearing. On July 18, 2022, ALJ Mott conducted a hearing at which the employer failed to appear and issued Order No. 22-UI-198438, affirming decision # 150248. On July 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument by way of an email dated August 24, 2022. EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring 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).

FINDINGS OF FACT: (1) American Bankers Insurance Company employed claimant as a customer service representative from February 4, 2019 until May 20, 2022. Claimant assisted customers over the telephone. Claimant initially worked at the employer's call center, but began working from home after the beginning of the COVID-19 pandemic.

(2) Throughout claimant's employment, but increasing to be "really bad" after she began teleworking, claimant felt she was being "cyber harassed." Transcript at 18, 5. Claimant received multiple calls that she believed were from the same caller or entity. Claimant felt that the calls were "very cruel," and that the caller was "rude" and using "an awful tone of voice." Transcript at 7, 10. Claimant experienced the calls "every day," and believed that the caller was intentionally "antagonizing" her to "get [her] really upset." Transcript at 11. The calls lasted 30 to 45 minutes, which was significantly longer than the eight to twelve minutes for standard calls that she or her coworkers would receive. Transcript at 11. The calls would "wear on" claimant, and would "drive [her] to the point of exhaustion every single day." Transcript at 7, 9. Also as a result of the extended time on the telephone with the caller, claimant experienced stress, a "dry, sore throat," and would lose her voice "pretty often." Transcript at 20.

(3) Claimant reported the calls to the FBI on multiple occasions, but never received a response. Claimant also reported the matter to the employer, who swapped out claimant's computer equipment in response. The equipment replacement curbed the calls for a few weeks, but eventually claimant began to experience the calls again.

(4) In February 2022, claimant sought medical advice to address her irritated voice, and her doctor wrote her a note advising the employer to give her more "evenly spaced out breaks." Transcript at 25. The employer only allowed claimant the accommodation in the doctor's note "for a certain time," however. Transcript at 26. As a result, claimant's breaks were sometimes not spaced out throughout her shifts, and she would sometimes not have her final break until close to the end of her shift.

(5) On May 20, 2022, claimant voluntarily quit work because she was experiencing stress, exhaustion, the loss of her voice, and a sore throat due to the unusually long calls on a daily basis.

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 due to the impact on her health of unusually long telephone calls with a person or entity claimant believed was "cyber harass[ing]" her. The order under review concluded that claimant did not have good cause to voluntarily quit because the situation, while "strange or uncomfortable," was not grave. Order No. 22-UI-198438 at 2. The record does not support this conclusion. Claimant described circumstances in which she experienced a daily pattern of what she perceived to be harassment that caused her to experience stress, exhaustion, the loss of her voice, and throat pain. The prolonged, repeated telephone calls on a daily basis that caused claimant to experience stress, exhaustion, the loss of her voice, and throat pain faced posed a grave situation.

Further, the record does not show that claimant had a reasonable alternative to quitting when she did. The record shows that claimant attempted several times to stop the calls from coming to her, such as by reporting the matter to the FBI and the employer. However, the FBI never responded to claimant's reports. While employer's attempt to help claimant by changing out claimant's computer equipment worked temporarily, claimant began experiencing the calls again. Additionally, the record shows that claimant attempted to mitigate the negative effects that the extended calls were having on her voice by seeking her doctor's help. While the ensuing doctor's note allowed claimant to have more evenly-spaced breaks for a period of time, the employer did not continue to honor the accommodations suggested by claimant's doctor. The record does not indicate that other options were available to claimant that would have helped claimant avoid the calls or mitigate the negative effects they had on her. Therefore, claimant had no reasonable alternative but to quit when she did.

Because claimant quit work for a reason of such gravity that she had no reasonable alternative to quit, 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-198438 is set aside, as outlined above.

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

DATE of Service: October 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.

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.

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 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.

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