

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0902

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 14, 2022, 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 June 5, 2022 (decision # 132834). Claimant filed a timely request for hearing. On August 10, 2022, ALJ Meerdink conducted a hearing, and on August 11, 2022 issued Order No. 22-UI-200355, affirming decision # 132834. On August 19, 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) Rock Gate Capital, LLC employed claimant as a branch manager from August 21, 2020 until June 9, 2022.

(2) Claimant's duties as branch manager included recruiting students to the employer's truck driver training school and working with government agencies to acquire funding for these students. Claimant had worked in this field for 27 years and had developed a good reputation within the industry.

(3) Over the course of claimant's employment, the employer increased the number of students per instructor. This led to courses taking longer than initially anticipated and increased the failure rate amongst students. Claimant believed that, because of these changes, she had misled students and other industry professionals about the length of the class and costs associated with completing the training.

(4) After the employer increased the student-to-instructor ratio, the employer then pressured claimant to enroll more students and to lie about the student to instructor ratio. Audio Record at 14:20. Claimant

brought these concerns to her manager on three occasions, explaining that the employer did not have the student to instructor ratios or equipment to train the number of students she was being asked to enroll. Each time her manager told her not to worry about these issues.

(5) As a result of the pressure to enroll students and either mislead or lie to potential customers, claimant experienced significant stress. This resulted in her crying every day after work and having trouble sleeping. This began in January or February 2022, and persisted throughout claimant's employment. Claimant also feared that if she continued to deceive customers and other industry professionals she would damage her reputation within the industry.

(6) Around May 2022, the employer announced a scheduling change where employees would work four days a week, instead of five. Claimant believed that instructors only working four days a week would further exacerbate delays in students completing the course and further increase the failure rate. Following the announcement of this adjusted schedule, claimant provided the employer with a two-week notice. Her last day worked was June 9, 2022.

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.

The order under review concluded that claimant voluntarily quit without good cause because she disagreed with the employer's business practices and "a reasonable and prudent person can continue to work for an employer even though they disagree with business practices." Order No. 22-UI-200355 at 2. The record does not support this conclusion.

The record shows that claimant's disagreement with the employer's business practice created a grave situation. Claimant believed that she was required to be deceptive and explicitly lie to potential customers about the length of time the course would take and the student to instructor ratio in order to get them to enroll in the employer's services. She disagreed with this business practice and was concerned that it was hurting her customers. The stress from this disagreement began to cause claimant significant mental and physical health issues, including crying every day after work and having trouble sleeping. These symptoms were consistent and persisted for months before claimant quit. Additionally, claimant had built a significant reputation within this industry, and believed this would be eroded by following the employer's business practices. Given the impacts on claimant's health and reputation, a reasonable and prudent person would have found the disagreement with the employer's business practices too substantial to continue to work through.

The record further shows that claimant had no reasonable alternative but to quit. Claimant brought her concern, regarding an insufficient number of instructors and the effect this had on students, to the attention of her manager on three occasions. When she did, the manager told claimant that this was not something claimant needed to worry about. Audio Record at 14:50. However, the employer did not take action to address these concerns. Further, the employer made scheduling changes that claimant believed would actually exacerbate the issue. Given this response, it was reasonable for claimant to believe that any additional attempts to address the matter with the employer would have been futile, as they had no apparent intention of changing these business practices.

For the above reasons, claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit. Claimant therefore quit work with good cause and is not disqualified from benefits based on the work separation.

DECISION: Order No. 22-UI-200355 is set aside, as outlined above.

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

DATE of Service: November 28, 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 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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