

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0970

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 27, 2022 (decision # 153311). Claimant filed a timely request for hearing. On August 22, 2022, ALJ Frank conducted a hearing, and on August 30, 2022 issued Order No. 22-UI-201689, affirming the administrative decision. On September 18, 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) Klamath County employed claimant from May 8, 2013 until April 4, 2022. Claimant worked as a park maintenance employee.

(2) Around April 2021, claimant became pregnant. Claimant did not immediately tell her employer about her pregnancy because she had witnessed the negative treatment of employees who became pregnant in the past. When claimant did tell her supervisor that she was pregnant, her supervisor "rolled his eyes" and said, "I guess we'll have to have to find someone to help you since you won't be able to do anything anymore." Audio Record 10:06 to 10:20.

(3) After she informed the employer of her pregnancy, claimant's co-workers and supervisors disparaged her by stating that she was unable to do her job due to being pregnant. Also because of her pregnancy, the employer removed claimant from a project claimant had historically performed each year. Audio Record at 12:00. During claimant's tenure with the employer, claimant witnessed this

treatment occur to another employee who became pregnant, and it did not relent when that employee gave birth.

(4) Claimant sent an email to human resources stating that the job was not “pregnancy friendly,” but did not otherwise inform the employer of the negative treatment she received. Audio Record at 23:45 to 23:55. Upon receiving the email, human resources responded with a list of other positions with the employer. Neither claimant nor human resources pursued any further discussion on the specific incidents that claimant experienced. If human resources had been aware of the negative treatment that claimant experienced, they would have conducted an internal investigation into those incidents and, if necessary, taken disciplinary action. The internal investigation would have included interviewing employees who had been pregnant while employed, as well as managers.

(5) On January 18, 2022, claimant went on maternity leave. Her anticipated return date was April 2022.

(6) On April 1, 2022, claimant sent the employer notice that she would be resigning effective April 4, 2022. Claimant quit work because she feared the treatment that she would receive at work when she returned to work, following her maternity leave.

CONCLUSIONS AND REASONS: Claimant quit work without 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 quit work on April 4, 2022, because she feared the treatment that she would receive when she returned to work, following her maternity leave. The record demonstrates that claimant likely faced a grave situation that a reasonable and prudent person would find untenable. Claimant experienced adverse treatment from supervisors and co-workers at work during her pregnancy. When she initially informed her supervisor that she was pregnant, the supervisor told her she would not be able to do her job anymore. Additionally, the employer removed claimant from at least one project because she was pregnant, and her colleagues openly disparaged her for needing to take time off. Further, claimant’s prior experience, witnessing another employee be disparaged when she returned from maternity leave, led her to reasonably believe that the negative treatment would continue when she returned. Therefore, a reasonable and prudent person could have found this to be a situation of sufficient gravity not to return.

However, the record shows that because claimant failed to pursue reasonable alternatives, despite the gravity of her situation, she did not have good cause to quit when she did. Claimant sent one email to human resources that did not state that claimant felt she was being treated differently due to being pregnant, or cite any specific incidents. Rather, the email stated that claimant’s job was not pregnancy friendly. This statement, that the job was not pregnancy friendly, was insufficient to put the employer on

notice of the adverse treatment claimant faced. Claimant could have had a more direct conversation or sent a more specific email about the negative treatment she experienced. The record shows, that if she had done so, human resources would have conducted an investigation and, if necessary, taken action to remedy the discrimination. However, claimant never informed the employer of the negative treatment she received. Claimant testified that she did not say anything to the employer because she believed any investigation would have been futile because her co-workers and supervisors would all lie to protect each other. Audio Record at 10:49. However, based on the evidence provided by the employer about the efforts they would have taken to address a complaint, the record does not show that any investigation would indeed have been futile. Therefore, informing the employer and allowing them to conduct an investigation into this negative treatment was a reasonable alternative to quitting. Claimant thus quit work without good cause and is disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-201689 is affirmed.

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

DATE of Service: December 6, 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 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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