

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1003

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 22, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective May 22, 2022 (decision # 144433). Claimant filed a timely request for hearing. On September 23, 2022, ALJ Fraser conducted a hearing, and on September 30, 2022 issued Order No. 22-UI-203974, affirming decision # 144433. On October 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on October 3 and 23, 2022. EAB did not consider claimant's October 3, 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) (May 13, 2019). See ORS 657.275(2). 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 him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019).

Claimant's October 23, 2022 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 him from offering the information during the hearing. In that argument, claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004). 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 October 23, 2022 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) U Haul Co of Oregon employed claimant as a reservation manager from May 11, 2022 to May 26, 2022.

(2) The employer's business did not have personalized workspaces; rather each workspace was usable by any employee. Each workspace contained all the equipment that an individual would need to complete their shift, including a headset and an earpiece. However, some employees had personal equipment that they preferred to use for their work.

(3) On May 20, 2022, a coworker approached claimant and grabbed a mousepad that claimant was holding under his arm. Following this event, claimant emailed his manager regarding this incident. His manager was not present that day, but sent an email reprimanding the offending coworker. This coworker responded by sending an apology to claimant.

(4) Claimant sent an additional message to a different manager because he was unsatisfied with this response. He never received a reply from this individual. Claimant made no effort to contact human resources regarding this incident.

(5) On May 26, 2022, claimant used the headset and earpiece that were at his workstation. This equipment was the personal property of the coworker that claimant had an incident with on May 20, 2022. That coworker approached claimant, pointed their finger at claimant, and aggressively demanded that claimant return their property. Claimant returned the property to the co-worker and the two employees got into an argument. After this argument, the coworker left and began to clean their property. Claimant's manager did not see the incident.

(6) Claimant approached his manager following the May 26, 2022 incident to discuss the incident. Claimant did not believe that his manager's response was satisfactory, but did not contact another manager or human resources regarding the incident. Claimant sent an email that evening informing the employer that he quit.

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 left work on May 26, 2022 because of disagreements with a coworker and dissatisfaction with his manager's response. However, claimant has not shown that this created a situation of such gravity that he had no reasonable alternative but to leave work.

The initial incident between claimant and his coworker occurred on May 20, 2022 when the coworker grabbed a mousepad that claimant was holding. While shocking to claimant, there is no evidence that there was any aggression directed at claimant or that the incident extended beyond the coworker retrieving their property. On May 26, 2022, claimant and the same coworker engaged in an argument

when claimant inadvertently used the property of the coworker again. The record shows that the coworker's demeanor was aggressive; however, the record also shows that the extent of the coworker's behavior was to point at their property and demand its return. An argument ensued after claimant gave the coworker their property, but the record does not show that claimant was in any danger or that the coworker further escalated the situation in any way. The record does not show that there were any threats, obscenities, cursing, physical aggression, intimidation, or even raised voices. After this brief argument, the record shows that the coworker left and cleaned their personal property. While the May 20 and 26, 2022 incidents were certainly upsetting, claimant has not shown that they created a grave situation.

Claimant further testified that he quit because of dissatisfaction with his manager's response to the May 26, 2022 incident. However, claimant and the employer disagreed about what the manager's response to the May 26, 2022 argument was. Claimant testified that after the May 26, 2022 incident he told his manager, he needed personal equipment and his manager "behaved obtusely" by acting as though he did not know how to order more equipment. Transcript at 18. His manager testified that it was atypical for an employee to request their own personal equipment, but he agreed to order one for claimant to avoid future conflicts between claimant and his coworker. Transcript at 34. Regardless of whether claimant's rendition of the employer's response is accurate or the employer's response is, neither rendition created a grave situation. Claimant had sufficient equipment to complete his job and potential delays in obtaining personal equipment did not render the situation intolerable. Further, while claimant maintains that the employer's response was insufficient, he quit working before the employer had a chance to implement any changes to address the situation.

Additionally, claimant has not shown that he pursued reasonable alternatives before quitting work. When claimant was dissatisfied with his manager's response, he had the reasonable alternative to take his frustration to a different manager or to human resources. Claimant testified that he preferred to take matters to frontline managers, but offered no reason why he did not follow up with anyone else once he believed his manager's solution was insufficient. Transcript at 22. Given the reoccurrence of incidents and connection between claimant's manager and the coworker, a reasonable and prudent person who was frustrated by their manager's response would have approached a different manager or human resources to address the May 26, 2022 incident. Claimant could have exercised this option and has not shown that contacting human resources or another manager would have been futile or that their response would have been insufficient. Claimant therefore did not pursue reasonable alternatives to quitting.

For these reasons, claimant quit work without good cause and is disqualified from unemployment insurance benefits.

DECISION: Order No. 22-UI-203974 is affirmed.

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

DATE of Service: December 13, 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 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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