

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1021

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 18, 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 19, 2022 (decision # 170141). Claimant filed a timely request for hearing. On September 22, 2022, ALJ Fraser conducted a hearing, and on September 29, 2022 issued Order No. 22-UI-203881, affirming decision # 170141. On October 5, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Umpqua Health Newton Creek LLC employed claimant as a patient representative from May 5, 2022, through June 23, 2022.

(2) Claimant had difficulty learning and performing her job duties with the employer's expected levels of speed and accuracy. The employer placed her on an improvement plan beginning June 17, 2022, in which she would receive daily feedback and coaching, and weekly reviews.

(3) On June 23, 2022, claimant was in her daily coaching session and felt that based on the feedback she was receiving, that she would be discharged at her weekly review the following day. She inquired about transferring to a different position better suited to her skills and experience, but the employer reported that no such positions were available. Claimant requested that the employer terminate her effective that day, and the employer agreed. Both parties understood that prior to claimant's request to separate on June 23, 2022, she was scheduled for and expected to report to work on June 24, 2022.

(4) The employer had no intention of discharging claimant on June 23, 2022, prior to claimant's request. The employer had not prepared claimant's final paycheck nor any other separation documents for the meeting of June 23, 2022. Though she was not yet meeting expectations, claimant was showing progress as of this meeting. While a formal decision had not been made for the June 24, 2022 review, the employer's intention was to continue claimant's improvement plan for another weekly review.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Though claimant and the employer characterized her separation as a termination by mutual agreement, the labels chosen by the parties are not determinative. Transcript at 15. If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If an employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Here, both parties understood that prior to claimant's request to separate on June 23, 2022, she was scheduled for and expected to report to work on June 24, 2022. Transcript at 8, 23. She therefore could have worked for an additional period of time, and the separation is properly characterized as a voluntary leaving.

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). A claimant has good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects. *McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010).

Claimant testified that the employer brought up the issue of separation by asking if claimant ". . . wanted to be terminated today or terminated tomorrow." Transcript at 8. This is in contrast to the testimony of the employer's witness, who was a party to the conversation on June 23, 2022. She testified that claimant volunteered that she "preferred" to be let go that day over facing her weekly performance review the following day. Transcript at 14. The employer's account is supported by additional testimony that going into the meeting of June 23, 2022, the employer had not prepared claimant's final paycheck nor any other separation documents, which they likely would have done had they intended to suggest claimant separate from work that day. Additionally, the employer's other witness testified that she was prepared to recommend that claimant's improvement plan be continued at the review of June 24, 2022. Transcript at 33. More likely than not, the employer's account most accurately describes the meeting of June 23, 2022.

Claimant subjectively believed that she was about to be discharged on June 24, 2022, because the employer was not satisfied with her progress in the learning the job. Transcript at 8. Objectively, the employer intended to continue claimant's improvement plan and saw day-to-day progress in her work. Her discharge was therefore neither imminent nor inevitable. Claimant may have been uncertain of the employer's feelings and intentions at the time of her separation, but those uncertainties would have been resolved had claimant waited an additional day to attend her scheduled review. Claimant has offered no evidence that being discharged from a position to which she gave her best efforts but felt she was not well suited and which she held for little more than a month would have affected her future job prospects. Claimant's subjective fears of discharge were not of sufficient gravity that she had no reasonable alternative but to leave work when she did.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective June 19, 2022.

DECISION: Order No. 22-UI-203881 is affirmed.

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

DATE of Service: December 15, 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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