

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1031

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 3, 2022 (decision # 143102). Claimant filed a timely request for hearing. On September 20, 2022, ALJ Clemons conducted a hearing at which the employer failed to appear, and on September 22, 2022 issued Order No. 22-UI-203335, affirming decision # 143102. On October 10, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's October 10, 2022 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). Claimant's November 5, 2022 argument 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. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's November 5, 2022 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Oregon21, LLC employed claimant as a food, beverage, and hospitality manager from May 2, 2022 until July 6, 2022.

(2) The venue at which claimant was working was slated to host the World Athletics Championship and was expecting about 100,000 attendees for the event. Claimant's position was temporary, and was scheduled to end at the end of July 2022 after the event concluded.

(3) From the beginning of her employment, claimant had a difficult time working with her supervisor due to the supervisor's behavior. For instance, the supervisor frequently made changes to procedures or instructions she had given to claimant, often on short notice. Additionally, claimant felt that the supervisor "bullied" her by belittling claimant, making claimant "appear incompetent in front of other people," and speaking to claimant in an "accusatory or . . . condescending way[.]" Transcript at 8-9.

(4) Claimant's difficulties with her supervisor caused her to experience significant stress and anxiety, which in turn impacted claimant's eating, and caused her to lose sleep. Claimant would sometimes lie awake at night and "think oh God, what if I didn't do that right for her or, you know, what is she gonna get mad at me for, you know, the next day." Transcript at 18.

(5) Around late May 2022, claimant attempted to address her difficulties with her supervisor by speaking directly to the supervisor about the matter, but their working relationship did not improve. Claimant also spoke to the employer's human resources office (HR) about the matter on at least three occasions. However, the employer's HR staff told claimant that they could not intervene because the supervisor did not actually work for the employer. The only potential solution that HR offered claimant was for claimant to speak to the employer's CEO about the matter directly. However, claimant did not do so because the CEO was "a really important person" and was preparing for the upcoming event, and claimant did not think that her own personnel issues were important enough to ask the CEO to address them. Transcript at 13.

(6) Towards the end of her employment, claimant made a call to one of the employer's contracted food vendors to explain a recent policy change. During the call, the vendor asked claimant if she was "getting ready to cry," and claimant responded that she was. Following the call, claimant realized that the stress caused by the situation with her supervisor was no longer bearable.

(7) On July 5, 2022, claimant told her supervisor that she had decided to quit. On July 6, 2022, claimant worked her last shift for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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 her difficult working relationship with her supervisor and the effects it had on her physical and mental health, such as anxiety and disturbed sleep. The order under review concluded that this did not constitute a grave reason for quitting because "there is nothing in the record to suggest that the supervisor's behavior was so abusive or intolerable that it created a grave situation for the claimant[.]" Order No. 22-UI-203335 at 3. The order under review further concluded that claimant had the reasonable alternatives of either "continuing to work for three additional weeks" or discussing her concerns with the employer's CEO. Order No. 22-UI-203335 at 3. The record does not support these conclusions.

First, the record shows that claimant's situation was grave. The stress that claimant experienced as a result of her difficult relationship with her supervisor led her to suffer from disturbed sleep, anxiety, and

related conditions. The severity of the stress—for instance, causing claimant to lay awake at night worrying about future interactions with her supervisor, or causing her to be on the verge of tears when interacting with a vendor at work—was significant. Faced with such disruptions to both claimant’s work and her home life, a reasonable and prudent person facing these circumstances would not have continued to work for the employer for an additional period of time.

Further, the record shows that claimant pursued reasonable alternatives to quitting. Claimant attempted to address her issues directly with the supervisor, but saw no changes. Claimant also sought help from HR on multiple occasions, but HR told her that they were unable to help because the supervisor was not an employee of the employer. While claimant did not attempt to address the issue with the employer’s CEO, as HR had suggested, the record does not show that doing so would have likely been effective. Given the scale of the event that the employer was hosting, it is unlikely that the CEO would have had sufficient time or willingness to make an effort to personally intervene between claimant and her supervisor. Likewise, given the few weeks remaining in claimant’s contract and the fact that the supervisor did not actually work for the employer, the record does not show that the CEO could have actually solved the problem in the time remaining. Therefore, addressing the matter with the CEO would, more likely than not, have been futile and not a reasonable alternative to quitting.

Finally, continuing to work for the employer until the job ended was not a reasonable alternative to quitting. As discussed above, a reasonable and prudent person in claimant’s situation would not have continued to work for the employer for an additional period of time, and as such continuing to work for the employer until the job ended was not a reasonable alternative to quitting. *Compare Hill v. Employment Dep’t.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work).

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-203335 is set aside, as outlined above.

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

DATE of Service: December 20, 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.

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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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