

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1049

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 23, 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 August 7, 2022 (decision # 144059). Claimant filed a timely request for hearing. On October 4, 2022, ALJ Sachet-Rung conducted a hearing, and on October 11, 2022, issued Order No. 22-UI-204745, affirming decision # 144059. On October 14, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's 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 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

EVIDENTIARY ISSUE: In her written argument, claimant objected to the admission of Exhibit 3, alternately referred to as Employer's Exhibit 1 during the hearing, because she had not been provided a copy of it in advance of the hearing. The record does not establish whether the employer sent a copy of the exhibit to claimant. OAR 471-040-0025(5) provides in pertinent part: "Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible." Exhibit 3 is a portion of a text message from claimant to the employer which is partially contained within Exhibit 2, which was submitted by claimant. In Exhibit 2, the message at issue is truncated, and Exhibit 3 merely provides the remainder of the message that is not visible in claimant's submission. Exhibit 3 was not irrelevant, immaterial, or unduly repetitious, and was therefore properly admitted, even without advance notice to claimant. Claimant has not demonstrated that its admission to evidence substantially prejudiced her rights, and her objection is overruled.

FINDINGS OF FACT: (1) K & K Sound Systems Inc. employed claimant from October 2021 through August 7, 2022. She worked fifteen hours per week doing packaging work and other work in the office, and five hours per week taking care of cats. On July 27, 2022, claimant was offered additional weekly hours working in the office, but she declined.

(2) On August 4, 2022, claimant filed an anonymous complaint with OSHA (Occupational Safety and Health Administration) against the employer alleging that her workplace was unsafe due to rat infestation. OSHA emailed the employer notice of the complaint. The employer did not suspect claimant was the employee who filed the complaint.

(3) Claimant raised concerns over the rat infestation with the employer beginning in November 2021 and as recently as a week before her complaint. Transcript at 9-10. The employer hired exterminators and set out traps and poison, in addition to bringing a dumpster to the location to clear out the room believed to be the source of the rat problem. Quarterly exterminator inspections and professional weekly cleanings were done over the course of claimant's employment.

(4) On August 4, 2022, the employer received the complaint and responded to OSHA detailing various mitigation strategies it was employing to deal with the rat problem. It also blamed an unnamed "fairly new hire" for exacerbating the rat problem by leaving cat food open, which attracted rats. Exhibit 1 at 6. Claimant was that employee.

(5) On August 7, 2022, the employer texted claimant that they would "be looking for another cat caretaker." Exhibit 2 at 1. No mention was made of claimant's primary work duties in the office. The employer intended the message to mean that claimant would spend all twenty of her weekly work hours on office duties once the cat caretaking duties were reassigned.

(6) Claimant replied to the text, in pertinent part: "You are rude, selfish and I feel sorry for the people who work for you. You can mail my last pay check. Have a nice life . . . Please do not contact me again." Exhibit 3 at 2. Claimant then blocked the employer's number from being able to contact her. Claimant resigned her employment because the cat caretaking duties were being reassigned.

(7) On August 9, 2022, OSHA concluded that the employer's response to the complaint was adequate and that the conditions complained of were corrected or no longer existed. Exhibit 1 at 7.

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

Nature of the Work Separation. 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 the 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant contends that the employer's text on August 7, 2022, that they would "be looking for another cat caretaker" led her to believe that she had been discharged. Transcript at 5-7. Claimant's cat caretaking responsibilities were ancillary to her main employment duties in the office. She spent only

five hours per week on these caretaking duties. Under the circumstances, it was not reasonable for claimant to interpret the employer's removal of these duties as a discharge from her primary employment. The employer wanted claimant to continue working at least twenty hours per week on her office duties. The claimant testified she was not willing to continue working for the employer "under the circumstances" at that time. Transcript at 7.

Because claimant was unwilling to work for the employer for an additional period of time, even though allowed to do so by the employer, the separation is properly considered a voluntary leaving.

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). "[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 employer's decision to change claimant's duties for five hours per week from cat caretaking to all office work did not constitute a grave situation. Office work comprised three quarters of claimant's weekly work time prior to this change, and claimant has presented no evidence that exclusively performing this type of work would burden her in any way. Claimant speculated that the employer made this change in retaliation for claimant filing a complaint with OSHA. Transcript at 7. If proven, this would have a significant bearing on whether the situation was sufficiently grave. However, the employer credibly denied knowing that claimant filed the complaint, and the context surrounding the text exchange leading to the separation suggests a "heated" argument between the parties over the treatment of one or more cats prompted the employer to change claimant's duties, rather than concerns over the rat complaint. Exhibit 2 at 1; Transcript at 6. Claimant has therefore not met her burden of showing that this situation was of sufficient gravity to justify leaving.

Claimant asserted that she had "good cause for voluntarily leaving" not just in her speculation that the employer was retaliating against her for the OSHA complaint, but because of the working conditions that led her to complain. Transcript at 7. She testified she smelled evidence of the rats as soon she walked in to the building and believed there were hundreds of rats present. Transcript at 11. As a result, she stated she experienced "occasional maybe headaches" and "some mild upper respiratory things . . . you would associate with like allergies." Transcript at 11. Claimant denied seeking medical treatment for these issues. Transcript at 11. Claimant was aware that exterminators were working on the problem and offered no suggestions to the employer to remedy the situation beyond storing the cat food more securely. Transcript at 12.

An uncontrolled rodent infestation affecting the health of an employee is a reason of such gravity as to justify quitting only if the employee has no reasonable alternative but to leave work. Here, claimant had the alternative of complaining to OSHA when she felt the employer was insufficiently responsive. Claimant made such a complaint and was informed that the employer would have ten days to correct the situation. Exhibit 1 at 8. Claimant resigned three days after her complaint, before she knew OSHA's response and whether the problem would be resolved. Two days after her resignation, the problem had been resolved to OSHA's satisfaction. Claimant did not avail herself of the reasonable alternative of

waiting a few days for the completion of OSHA's investigation, or pursuing it further if she disagreed with its preliminary findings. Accordingly, she did not have good cause for leaving.

Therefore, claimant voluntarily left work without good cause. She is disqualified from receiving benefits effective August 7, 2022.

DECISION: Order No. 22-UI-204745 is affirmed.

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

DATE of Service: December 22, 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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