

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1073

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 26, 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 12, 2022 (decision # 142147). Claimant filed a timely request for hearing. On September 29, 2022, ALJ Clemons conducted a hearing, at which the employer failed to appear, and on October 3, 2022 issued Order No. 22-UI-204066, affirming decision # 142147. On October 20, 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) 7 Eleven employed claimant as a cashier from February 28, 2022 until June 15, 2022.

(2) Shortly after claimant began working, claimant made a complaint to the employer's corporate office about her store's franchisee allowing a person to stay in a back room of the store. As a result, the franchisee yelled at claimant because she "got him in trouble." Audio Record at 21:33 to 21:49.

(3) On April 21, 2022, claimant left her personal belongings behind the sales counter, which the franchisee inspected, in view of customers, for store property claimant may have concealed. Claimant confronted the franchisee moments later when he went to his office and an argument ensued, causing claimant to leave work early.

(4) On June 15, 2022, claimant notified the franchisee that her register was not working correctly. The franchisee responded by calling claimant a liar, yelling, and using foul language. During the interaction, claimant asked the franchisee not to speak to her that way, but he continued. Claimant walked out of the store and never worked for the employer again.

(5) Though the franchisee was claimant's direct supervisor, the employer had a procedure for employees to make complaints directly to their corporate office. The employer investigated complaints against franchisees and imposed discipline against them. Claimant was aware of this reporting procedure. Claimant did not complain to the employer's corporate office about the way the franchisee treated her. Claimant did not complain to the franchisee directly about the way that he spoke to her or treated her other than during the incidents themselves.

CONCLUSIONS AND REASONS: Claimant voluntarily 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 failed to meet her burden to prove that she quit work with good cause. Claimant quit work on June 15, 2022 following an incident in which the employer's franchisee became irate, yelled at claimant, and directed foul language at her. On this record, the franchisee's behavior toward claimant may have presented claimant with a grave situation. Nevertheless, the record shows that claimant quit work without good cause because she failed to pursue reasonable alternatives to leaving work.

Specifically, claimant had the option of complaining about the franchisee's conduct to the employer's corporate office. Claimant testified that she did not make such a complaint because she "didn't have anyone to go to" at corporate because the franchisee "was the owner." Audio Record at 24:00 to 24:25. However, the record shows that making a complaint to the corporate office was a viable alternative to quitting because claimant had previously made such a complaint regarding the franchisee allowing a person to stay in the back room of the store. Audio Record at 21:33 to 21:49. She learned that the corporate office investigated her complaint on that occasion and that it got the franchisee "in trouble." Claimant was therefore aware of the employer's complaint procedure and that the franchisee was subject to the employer's discipline. A reasonable and prudent person in claimant's position would have complained to the corporate office regarding the June 15, 2022 incident. If the franchisee mistreated claimant thereafter as retaliation for complaining, and that retaliation was reported but not properly addressed, the situation would have been such that a reasonable and prudent person would not have continued to work for the employer for an additional period of time. Because claimant failed to avail herself of this reasonable alternative to quitting, she did not have good cause to leave work when she did.

Therefore, claimant voluntarily left work without good cause. She is disqualified from receiving benefits effective June 12, 2022.

DECISION: Order No. 22-UI-204066 is affirmed.

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

DATE of Service: December 28, 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

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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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