

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1094

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 17, 2021, 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 benefits effective November 28, 2021 (decision # 84909). Claimant filed a timely request for hearing. On October 14, 2022, ALJ Micheletti conducted a hearing, and on October 20, 2022 issued Order No. 22-UI-205596, affirming decision # 84909. On November 1, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's 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).

FINDINGS OF FACT: (1) Shari's Management Inc. employed claimant as an assistant restaurant manager from September 25, 2019 until November 30, 2021.

(2) On November 30, 2021, claimant was late for her shift due to her daughter being in the hospital. Claimant previously left a message for her supervisor that she would be late and had arranged for another employee to cover in her absence.

(3) Upon arriving at work, claimant's supervisor called claimant and another assistant manager to address claimant's frequent absences and tardiness to work. Claimant's supervisor understood and accepted claimant's reason for being late on this occasion, but wanted to develop new processes with her to accommodate both her need to occasionally miss work and the restaurant's staffing needs.

(4) Although claimant's supervisor did not intend to discipline claimant for being late during this conversation, claimant believed he was angry with her and she felt she was in danger of being discharged. When the phone conversation ended, claimant left the restaurant without completing her shift.

(5) Claimant's supervisor texted claimant shortly after she left that he considered her leaving to mean that she was quitting the job, unless she told him otherwise. Claimant returned to the restaurant later that day to leave her keys. Upon claimant's arrival, some employees asked her to leave the premises. Claimant completed the task of returning the keys, did not communicate with her supervisor further, and did not work for the employer again.

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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

After the phone conversation between claimant and her supervisor, claimant walked out of the restaurant and did not complete her scheduled shift. The supervisor interpreted this as claimant quitting, and texted claimant his understanding, asking her to notify him if she had not intended to quit. Claimant did not respond that she wished to continue working, but instead returned her keys to the establishment. That claimant left the restaurant without completing her shift demonstrated that claimant was unwilling to continue working for the employer for an additional period of time. The supervisor's text, which merely conveyed the employer's understanding that claimant had quit but did not state that claimant was discharged, did not operate to prevent claimant from continuing to work for the employer. That claimant then went to the restaurant to return her keys further bolsters the conclusion that claimant was unwilling to continue working for the employer for an additional period of time. Although some employees asked claimant to leave the premises when she entered the restaurant to return her keys, claimant had already quit working for the employer at that point given that she had walked out on her shift and decided to return her keys. Claimant's appearance at the restaurant to return keys only confirmed her unwillingness to continue working for the employer for an additional period of time. Because claimant could have continued to work for the employer for an additional period but was unwilling to do so, the work separation was a voluntary leaving that occurred on November 30, 2021.

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).

Claimant walked out of the restaurant at the conclusion of her phone conversation with the manager. She thought that he was angry with her for being late to work, and claimant was upset because she felt her tardiness was justified by a family emergency. Claimant interpreted the anger she perceived the manager as having toward her as an intent to discharge her for being late, which she believed was not misconduct. Claimant quit to avoid such a discharge.

The employer had no intention of discharging claimant during the conversation, or even disciplining her for being late. They accepted claimant's excuse as reasonable. Even claimant described the conversation as "a discussion on how shifts need to be moved around or what can we do to make this better[.]" Transcript at 20. After claimant left and the supervisor texted her that he considered her to have quit unless she replied to the contrary, claimant failed to text or otherwise leave a message for the supervisor in response because she "figured he just didn't want [her] there anymore." Transcript at 26. Quitting work to avoid an imminent discharge can, in some circumstances, amount to good cause for leaving work. *See McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had 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). However, claimant's fear of discharge was objectively unreasonable. Her supervisor gave no indication that discharge or discipline was imminent or inevitable. His text made clear to claimant that he did not discharge her. Claimant therefore did not face a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work. Accordingly, she quit without good cause.

For the above reasons, claimant quit work without good cause and is disqualified from receiving benefits effective November 28, 2021.

DECISION: Order No. 22-UI-205596 is affirmed.

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

DATE of Service: January 4, 2023

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 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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