

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1105

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 27, 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 21, 2022 (decision # 73937). Claimant filed a timely request for hearing. On October 26, 2022, ALJ Ainardi conducted a hearing, at which the employer failed to appear, and on October 28, 2022 issued Order No. 22-UI-206178, affirming decision # 73937. On November 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Banner Bank employed claimant as a teller from March 28, 2022 until August 23, 2022.

(2) In November 2021, claimant began experiencing kidney failure and, in December 2021, was hospitalized for the condition. Claimant recovered but thereafter was diagnosed with mild to moderate kidney failure and received ongoing care for the condition. In July 2022, claimant's doctors determined that claimant's kidney failure remained at the mild to moderate stage.

(3) Claimant's job description required, among other things, that claimant refer banking products and services to the employer's clients and "meet minimum referral standards set by Manager." Exhibit 1 at 9. The process of making referrals involved claimant checking the account of a client she was helping at her window, and recommending that the client buy a product or service, such as a savings account, a certificate of deposit, or online banking. When claimant interviewed for the job, she did not believe she received the portion of the job description stating that making referrals was required. Nevertheless, in mid-July 2022, claimant's branch manager had a conversation with claimant about her need to make referrals.

(4) Claimant often did not make referrals to clients because she was opposed to doing so. Claimant opposed making referrals because she was "not a salesman," did not feel she was hired to be a salesperson, and thought it was an imposition on the privacy of the clients to check their accounts and

offer to sell them products or services. Claimant also disliked making referrals because it distracted her from making deposits and withdrawals for clients. Transcript at 6-7.

(5) Claimant's relationship with her branch manager was tense because of the branch manager's insistence that claimant make referrals. Claimant also felt uncomfortable around the branch manager because, on one occasion at the beginning of August 2022, the branch manager commented that claimant's hair was beautiful and she should wear it down. Claimant preferred to keep her hair in a bun, but took it out of the bun in response to the comment. At the end of the conversation, the branch manager stated she was going to "remake" claimant. Transcript at 13. Claimant also felt uncomfortable around the branch manager because she thought the branch manager had involved herself in a notary public application of one of claimant's coworkers, which claimant believed led to that coworker being investigated by state officials.

(6) On August 2 and August 10, 2022, claimant's branch manager talked with claimant again about her need to make referrals. On August 18 or 19, 2022, the branch manager met with claimant. In the meeting, the branch manager again talked with claimant about her need to make referrals. The branch manager advised that she would give claimant a write-up in the form of a "verbal counseling" for not making referrals and asked claimant if she intended to quit. Exhibit 1 at 5. Claimant stated that she was not going to quit. The branch manager advised that if claimant did not comply with making referrals, the branch manager would continue to write-up claimant and this further corrective action could result in the eventual termination of claimant's employment.

(7) On August 23, 2022, the branch manager gave claimant the verbal counseling write-up, which stated that claimant's performance was poor for not making referrals. Claimant became emotionally distressed when she heard that the employer regarded her performance as poor. She immediately resigned because of her emotional distress at hearing her performance was poor, because she thought her relationship with the branch manager had "fallen apart" and they could not work together anymore, and because she thought the employer would eventually discharge her and she did not want a discharge in her work history. Transcript at 8.

(8) The verbal counseling write-up did not discharge claimant. At the time claimant resigned, she was not in immediate danger of being discharged because the employer had a discipline policy that called for employees to receive a verbal counseling, a written counseling, and a final notice before termination of their employment. Exhibit 1 at 5.

(9) In September 2022, claimant's doctors checked the status of her kidneys and determined that claimant's kidney failure had advanced to the moderate to severe stage. Claimant's doctors did not indicate that claimant's experience with the employer had caused the condition to worsen. Claimant had not noticed any worsening symptoms of kidney failure during her time working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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). Claimant had kidney failure, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit working for the employer on August 23, 2022 because she was emotionally distressed at hearing her performance was poor, she thought her relationship with the branch manager had “fallen apart” and they could not work together anymore, and because she thought the employer would eventually discharge her and she did not want a discharge in her work history. Transcript at 8. Claimant did not meet her burden to show that any of these reasons presented her with a situation of such gravity that she had no reasonable alternative but to leave work when she did.

To the extent claimant quit working for the employer because of her emotional distress at hearing the employer regarded her performance as poor, claimant quit work without good cause. The record shows that claimant was emotionally shaken when she received the verbal counseling on August 23, 2022. Although claimant was emotionally distressed by employer’s feedback on her performance, claimant did not show that a reasonable and prudent person with her condition would leave work for that reason. Claimant received a poor performance write-up because she had declined to refer banking products and services to clients, a task that was part of her job description and which the branch manager had reminded her that she needed to do on numerous occasions in July and August 2022. The fact that a poor performance write-up for failure to make referrals was coming could not have been a surprise because on August 18 or 19, 2022, the branch manager again talked with claimant about her need to make referrals and advised that she intended to give claimant a verbal counseling for her failure to do so. Furthermore, while receipt of the August 23, 2022 write-up distressed claimant emotionally, it is not evident that claimant’s distress on August 23, 2022 or at any point during her employment had an effect on her kidney failure condition. The record shows that claimant had not noticed any worsening symptoms of kidney failure during her time working for the employer, and although claimant’s kidney failure condition had advanced to the moderate to severe stage as of September 2022, claimant’s doctors did not indicate that claimant’s experience with the employer was why her condition became worse. Thus, claimant did not establish, based on her distress at learning the employer considered her performance to be poor, that no reasonable and prudent person with kidney failure would have continued to work for the employer for an additional period of time.

Claimant also quit work without good cause to the extent claimant quit working for the employer because she thought her relationship with the branch manager had “fallen apart” and they could not work together anymore. Transcript at 8. Claimant failed to show that the status of claimant’s working relationship on August 23, 2022 was a situation of such gravity that she had no reasonable alternative but to leave work. The record shows that the main source of tension between claimant and the branch manager was claimant’s failure to make referrals. More likely than not, had claimant simply complied with this job task, her difficulties with the branch manager would largely have resolved. Claimant opposed making referrals because she was not a salesperson, thought it was wrong to make referrals by reviewing client accounts, and doing so would distract her from the withdrawal and depositing aspects of her job. However, the referral-making process merely involved identifying clients without certain

commonplace banking products like savings accounts and certificates of deposit, and then urging the clients to buy those products. No showing was made that the referral-making process involved forcing clients to buy something without their knowledge or against their will. As claimant did not show that making referrals involved fraud, elder abuse, or any other illegal or unethical conduct, a reasonable and prudent person with claimant's condition would have pursued this alternative rather than quit when claimant did.

Claimant additionally expressed discomfort with the branch manager because the branch manager had once asked claimant to let her hair down out of a bun and stated that she would "remake" claimant, as well as because the branch manager had involved herself in a coworker's notary public application. Transcript at 13. To the extent these contributed to a decline of claimant's relationship with the branch manager and caused her to quit on August 23, 2022, claimant did not show they presented her with a grave situation. The manager's "remake" comment to claimant, while unwelcome, was not objectively offensive, was not repeated, and did not subject claimant to oppression or abuse. Similarly, it is not evident that the branch manager's involvement in the coworker's notary public application was improper. In any event, the record does not show there was a likelihood the branch manager would involve herself in a similar way with claimant because claimant testified at hearing that she had successfully become a notary public while working for the employer. Transcript at 6.

Finally, to the extent claimant quit working for the employer because she thought the employer would eventually discharge her, claimant quit work without good cause. Quitting work to avoid being discharged can amount to good cause for quitting if, among other things, the discharge is imminent. *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); *Dubrow v. Employment Dep't.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Here, the record shows that claimant did not face an imminent discharge. At the time claimant resigned, she was not in immediate danger of being discharged because the employer had a discipline policy that called for employees to receive a verbal counseling, a written counseling, and a final notice before termination of their employment. Exhibit 1 at 5. While the branch manager had informed claimant on August 18, 2022 that she would continue to write-up claimant if she failed to make referrals as required, and this further corrective action could result in the eventual termination of claimant's employment, this did not mean that claimant faced imminent discharge. Instead, this demonstrated that claimant could have avoided any further discipline, including discharge, by simply fulfilling her job duty to make referrals. Accordingly, the record fails to show that claimant faced a situation of such gravity that she had no reasonable alternative but to leave work based on concern that the employer would eventually discharge her.

For the above reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective August 21, 2022.

DECISION: Order No. 22-UI-206178 is affirmed.

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

DATE of Service: January 6, 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 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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