

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1114

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 21, 2022, 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 unemployment insurance benefits effective August 21, 2022 (decision # 130814). Claimant filed a timely request for hearing. On October 17, 2022, ALJ Passmore conducted a hearing, and on October 20, 2022 issued Order No. 22-UI-205483, affirming decision # 130814. On November 7, 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 him 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. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) The Rebuilding Center employed claimant from October 2007 until August 24, 2022. Claimant worked as a salvage specialist and store manager. Claimant's direct supervisor was the employer's general manager.

(2) On August 21, 2022, claimant's direct supervisor met with him to deliver a written warning to claimant for failing to properly train a new employee. Claimant disagreed with the written warning, and at this meeting claimant and the supervisor began to argue. Both parties raised their voices and cussed at each other. Claimant's supervisor eventually determined the meeting was unsalvageable and told claimant, "Well, we're through." Transcript at 5. After stating this, claimant's supervisor left the room.

(3) Following the August 21, 2022 meeting, claimant was upset and went to his truck to calm down. He then decided he needed to contact a support person to help him calm down, and left the employer's store. Later that day, claimant called the executive director to discuss the incident. The executive

director suggested claimant return to work to meet with her and his supervisor. Claimant was unsatisfied with this response and believed that the employer “didn’t really care too much.” Transcript at 10.

(4) Claimant was not scheduled to work on August 22, 2022 or August 23, 2022.

(5) On August 23, 2022 at 12:19 p.m. the employer’s executive director texted claimant and asked, “Can you give me a call to discuss whether you will be returning to work?” Exhibit 1 at 5. Sometime between 2:00 p.m. and 4:00 p.m., claimant called the employer. During this phone call, the employer told claimant that he could return to work. Claimant stated he would need to think about whether he could. Transcript at 10-11. At 5:58 p.m. on the same day, the executive director again texted claimant asking whether he would be returning to work.

(6) On August 24, 2022, claimant responded to the employer’s text by stating “No I won’t. I will destroy credit card and return keys later this week. I’ll clean out my kiosk etc. when I return keys.” Exhibit 1 at 5.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

Nature of the work separation. If the 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).

Claimant argued that he did not quit work, asserting that he was discharged at the conclusion of the August 21, 2022 meeting with his supervisor. Transcript at 5; Claimant’s Written Argument. At the end of this meeting, claimant’s supervisor stated, “Well, we’re through.” Transcript at 5. The parties disagreed about what was meant by this statement. Claimant’s supervisor testified that all that was meant by this statement was that the meeting was over. Transcript at 25. In contrast, claimant maintained at hearing and in his written argument that this meant he was discharged. Transcript at 5; Claimant’s Written Argument. However, claimant did not deny that on August 23, 2022, the executive director texted claimant multiple times to see if he was willing to continue working. The executive director also spoke to claimant on the phone multiple times and informed him that he could come back to work for the employer. Claimant testified that he couldn’t come back to work with his supervisor after what had happened, and texted the employer that he would not return to work on August 24, 2022. Transcript at 10-11; Exhibit 1 at 5. Despite the fact that claimant believed that the employer had discharged him on August 21, 2022, his contacts with the executive director show that claimant knew he could return to work. Because claimant could have continued to work for the employer for an additional period of time, but was unwilling to, the work separation was a voluntary leaving that occurred on August 24, 2022.

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 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 did not meet his burden to show that a reasonable and prudent person of normal sensitivity would have left work for the reason that he did. The final incident that caused the work separation was an argument between claimant and his supervisor. However, the record is unclear as to what was specifically said or done in this meeting. Claimant testified that he feared for his safety, but could not recall what was said or done because he “kinda blacked it out.” Transcript at 5. Further, the record shows that it was claimant’s supervisor who ended the meeting and walked away from the exchange. Given the ambiguity of what was actually said or done, the record only reflects that both parties raised their voices and cursed at each other. While this may have been inappropriate behavior on the part of both parties, it does not establish that claimant’s circumstances were so grave that he had no reasonable alternative but to quit.

Further, even if claimant’s circumstances were grave, claimant has not shown that he sought reasonable alternatives to quitting. Claimant told the executive director about the incident and testified that he was unsatisfied with her response because it seemed that she “didn’t really care too much.” Transcript at 10. However, the record shows that the executive director offered to mediate a conversation between claimant and his supervisor, and claimant declined. A reasonable and prudent person would have pursued that alternative before deciding to leave the employer. Claimant therefore quit without good cause and is disqualified from receiving benefits effective August 21, 2022.

DECISION: Order No. 22-UI-205483 is affirmed.

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

DATE of Service: January 12, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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