

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1123

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 115603). The employer filed a timely request for hearing. On October 13, 2022, ALJ Micheletti conducted a hearing, and on November 7, 2022 issued Amended Order No. 22-UI-206815, reversing decision # 115603 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective June 7, 2020.¹ On November 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: The order under review stated that “[n]o exhibits were offered or admitted into evidence.” Amended Order No. 22-UI-206815 at 1. However, the record shows that claimant offered a seven-page document, marked as Exhibit 1, into evidence at the hearing. Claimant stated that she sent a copy of the document to the employer’s representative on September 27, 2022, and that the employer’s representative confirmed that they had received it; the employer’s witness stated that she did not receive a copy of the document. Audio Record at 1:40 to 2:50. The ALJ did not rule on the admission of Exhibit 1. By serving a copy of the document on the employer’s representative prior to the commencement of the hearing, claimant complied with OAR 471-040-0023(4) (August 1, 2004), regardless of whether the employer’s representative subsequently provided the exhibit to the employer. Furthermore, evidence contained within the exhibit is relevant to the outcome in this matter. Therefore, under OAR 471-040-0025 (August 1, 2004), the ALJ should have admitted the exhibit into the record. Exhibit 1 is hereby admitted into the record and a copy served to the parties with this decision.

¹ Order No. 22-UI-205670 and Amended Order No. 22-UI-206615 were issued on October 21, 2022 and November 3, 2022, respectively, both of which cited incorrect dates of disqualification. For purposes of this decision, “the order under review” refers to Amended Order No. 22-UI-206815, issued on November 7, 2022.

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. EAB considered claimant’s argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Aaron Rents, Inc. employed claimant, most recently as a general manager at one of their rental stores, from January 2020 until June 9, 2020. As general manager, claimant reported directly to the employer’s regional manager.

(2) During her tenure with the employer, claimant became concerned about many of the employer’s working conditions. These included not being provided with personal protective equipment to protect against COVID-19, difficulty in obtaining help to unload deliveries from vendors, “being talked to condescendingly” by her supervisor, being required to work on days that the employer had previously approved her to take off, and not being permitted to take breaks or lunches. Transcript at 8. Claimant discussed some of these concerns with her supervisor or the employer’s human resources representatives, but did not feel that the employer adequately resolved the issues.

(3) On June 7, 2020, claimant was “extremely sick” and had a 102° F fever. Transcript at 6. Claimant contacted her supervisor to let her know that she was unable to work that day, but her supervisor asked claimant to work that day regardless of her illness because the supervisor was out of town and therefore was unable to cover claimant’s shift. Claimant refused to work that day, and the supervisor ultimately found another person to cover claimant’s shift. Claimant remained ill on June 8, 2020 and June 9, 2020, and called out sick on those days as well. While claimant was out sick, claimant’s supervisor followed up with her via phone call and text to ask her if she was still sick and when she intended to return to work.

(4) Claimant felt that her supervisor was pressuring her to return to work while still sick, which troubled her. On June 9, 2020, as a result of her feeling that her supervisor was pressuring her to return to work, as well as claimant’s other concerns about the employer’s working conditions, claimant voluntarily quit work.

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 voluntarily quit work due to a number of concerns about her working conditions and related issues. In particular, however, claimant quit after having being absent due to illness for three days,

during which time claimant felt that her supervisor was pressuring her to return to work while still sick. Although claimant's testimony at hearing suggested that her decision to quit was the result of a culmination of frustrations she had with the employer, she specifically testified that the supervisor contacting her repeatedly while she was sick was the "final incident" which led her to quit when she did. Transcript at 6. Thus, because the record shows that claimant would not have quit at that particular time if not for the interactions with her supervisor relating to claimant's absences in June 2020, this was the proximate cause of claimant's decision to quit. The analysis as to whether claimant had good cause to quit is therefore premised on that reason for quitting.

Regarding the final incident that led claimant to quit, the parties characterized the interactions between claimant and her supervisor differently. For instance, claimant testified that when she initially called in sick, her supervisor told her to "get [her] ass in to go to work." Transcript at 6. Claimant also testified that during her absence, her supervisor texted her multiple times with questions such as "Are you really sick? When are you done being sick? [and] Are you coming into work today?" Transcript at 16. The supervisor, by contrast, denied that she used foul language when speaking to claimant about her absences, stating that she doesn't "swear at employees," and testified that she only sent claimant "probably . . . two text messages in that timeframe" to confirm claimant's absence because claimant "wasn't calling in." Transcript at 23–24.

The employer did not submit any evidence to corroborate the supervisor's testimony. However, claimant submitted written statements from three people claimant described as witnesses to some of the supervisor's alleged behavior. For instance, a person identified as claimant's coworker stated, in relevant part, that "When sick and we had to follow covid protocol we were told to get our asses to work." Exhibit 1 at 5. Similarly, a person identified as having lived with claimant during the period at issue stated that they were present when claimant was sick at home and speaking to her supervisor, and that the supervisor "started yelling at [claimant] and told her to get her ass in to work. That she doesn't care if she was sick." Exhibit 1 at 6. These statements are neither sworn nor authenticated. Nevertheless, they corroborate claimant's account of the events that led her to quit. The weight of the evidence therefore shows that claimant's account of the interactions with her supervisor, where they differ from the supervisor's testimony, are more accurate.

Even when the facts are viewed in the light most favorable to claimant, however—finding that the supervisor used foul language and showed a lack of concern for claimant's well-being—claimant has not met her burden to show that these circumstances were so grave that she had no reasonable alternative but to quit. Claimant's interactions with her supervisor were troubling, to be sure. However, the record does not show that claimant suffered, or was likely to have suffered, any negative consequences from these interactions other than feelings of frustration. It does not, for instance, show that the supervisor prevented claimant from taking time off or threatened claimant's job as a result of claimant's refusal to work while she was sick, or that claimant developed mental or physical health issues as a result of the interactions. Without such heightened effects, a reasonable and prudent person would not have quit work for this reason. Because claimant did not quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit without good cause, and is disqualified from receiving unemployment insurance benefits effective June 7, 2020.

DECISION: Amended Order No. 22-UI-206815 is affirmed.

S. Serres and A. Steger-Bentz;
D. Hettle, 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 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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