

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1134

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 6, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective July 17, 2022 (decision # 122104). Claimant filed a timely request for hearing. On October 27, 2022, ALJ Fraser conducted a hearing and issued Order No. 22-UI-206111, affirming decision # 122104. On November 15, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's and the employer's written arguments when reaching this decision.

FINDINGS OF FACT: (1) Gemini Portfolio Management LLC employed claimant as a bartender from February 2021 until July 20, 2022.

(2) On June 6, 2022, claimant told the employer that she believed some of her coworkers were overserving alcohol to customers in violation of the law. The employer responded by advising all staff not to overserve customers. Claimant did not complain of this again until her resignation.

(3) In late June or early July 2022, claimant complained to the employer that a coworker had verbally abused her. The employer immediately addressed the complaint with the coworker and coached him on his behavior.

(4) On July 16, 2022, claimant believed a coworker was drinking and using "illegal drug[s]" during their shift. Transcript at 10. Claimant did not notify the employer of this prior to her resignation.

(5) On July 19, 2022, the employer issued claimant a written final warning regarding her attitude during her shifts the previous weekend, based on customer complaints that she appeared tired, low energy, sad, frowning, and doing the minimum amount of work. Claimant disagreed with the complaints and with receiving the warning. Claimant resigned primarily because she felt the employer did not appreciate how hard she worked in light of receiving the warning, but also because of concerns regarding coworkers overserving customers and using alcohol and drugs while working, which claimant felt could place her own permit to serve alcohol in jeopardy.

(6) On July 20, 2022, claimant emailed her resignation to the employer, offering to continue working until August 3, 2022, but only if several modifications were made to the employer's cash-handling procedures and staff scheduling. The employer declined to make the requested modifications and claimant did not return to work thereafter.

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).

Claimant sent her resignation to the employer on July 20, 2022. Though she offered to continue working for an additional period of time under several conditions, the employer was unwilling to meet those conditions. Claimant therefore never returned to work. The employer's inability or refusal to modify the conditions of claimant's employment as requested did not constitute disallowing her to work for an additional period of time. Upon the employer's rejection of her conditions, claimant was unwilling to continue working for the employer under the same terms of employment for an additional period of time. The separation is therefore properly characterized as a voluntary leaving which occurred on July 20, 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) (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 testified that the reason she quit was, "more than anything," the employer "not seeing the actual hard work that I was putting in." Transcript at 6. The record fails to show that the employer's lack of recognition or appreciation for claimant's work presented her with a situation of such gravity that a reasonable and prudent person would leave work. Claimant also quit because she feared losing her permit to serve alcohol because her coworkers were overserving customers and drinking and using drugs

while working. The risk of claimant losing her permit to serve alcohol because of the behavior of her coworkers could constitute a situation of such gravity that a reasonable and prudent person would leave work if there were no reasonable alternatives to leaving.

Claimant informed the employer on June 6, 2022, that she believed other employees were overserving customers. In response, the employer immediately advised their employees against overserving and regularly repeated that advisory thereafter. Claimant did not raise the issue with the employer again prior to her resignation. Claimant also believed a coworker was drinking alcohol and using drugs during their shift on July 16, 2022, but did not inform the employer of this until she wrote it in her resignation letter. Claimant had the reasonable alternative to quitting of notifying the employer of these situations and having the employer address them. Claimant testified that she did not complain to the employer about these situations because she did not feel it would matter since she felt the employer did not adequately address her June 6, 2022 complaint. Transcript at 13.

Alternatives to quitting may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). The record does not show that raising claimant's concerns with the employer would have been futile because the employer responded promptly to claimant's June 6, 2022 complaint regarding overserving. While claimant may have thought the response was inadequate, she did not notify the employer that the response did not resolve the problem. The employer also immediately responded to claimant's complaint that a coworker was verbally abusing her. The record therefore demonstrates that the employer was responsive to complaints when presented with them, and more likely than not, would have addressed claimant's complaints had she made them prior to resigning. Accordingly, claimant failed to prove that notifying the employer of her complaints would have been futile. As a result, claimant failed to establish good cause for quitting because she did not pursue reasonable alternatives prior to leaving work.

Therefore, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective July 17, 2022.

DECISION: Order No. 22-UI-206111 is affirmed.

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

DATE of Service: January 20, 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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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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