EO: 200
BYE: 202336

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

264
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1177

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 7, 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 28, 2022 (decision # 81102). Claimant filed a timely request for hearing. On November 8, 2022, ALJ Janzen conducted a hearing, and on November 9, 2022 issued Order No. 22-UI-206949, reversing decision # 81102 and concluding that claimant quit work with good cause and was not disqualified from receiving benefits. On November 28, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of 21 pages and has been marked as EAB Exhibit 1 and a copy provided to the parties with this decision. Claimant submitted this evidence prior to the hearing but it was not received by the Office of Administrative Hearings (OAH). The admission of this evidence is necessary to complete the record under OAR 471-041-0090(1)(a). Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Centennial Medical Group East employed claimant as a school-based healthcare medical assistant from March 2, 2022, until August 30, 2022. Claimant's work involved extensive travel between various worksites in her personal vehicle.

(2) On February 10, 2022, claimant accepted the employer's written offer of employment which stated that she would receive "mileage paid between sites." EAB Exhibit 1 at 2-3.

(3) On March 22, 2022, claimant emailed her first claim for mileage reimbursement to her supervisor, stating, "I'm only tracking miles driven between clinics/schools" and not commuting or personal miles, and asked if she was making the report correctly. EAB Exhibit 1 at 7. Claimant generally kept track of her mileage between worksites by noting the starting and ending odometer readings for the day. These readings sometimes encompassed more than one day or were not written down and had to be remembered days later when filling out the claim form. The first claim was accepted under these circumstances and paid without any indication to claimant that the claim was wrong.

(4) On April 6, 2022, and July 14, 2022, the employer emailed claimant about changes to the mileage reimbursement claim form to be used, but made no mention of claimant's claims being incorrect, and they continued to approve and pay them. Claimant continued to use the same methods for recording her mileage.

(5) On or about August 25, 2022, the employer told claimant that they had only agreed to reimburse claimant for mileage between two or three specific locations, not between all worksites, and that she would have to repay most or all of the reimbursement she had received to date, amounting to approximately $1,500.00. They also stated that the reimbursement claims were submitted fraudulently. Claimant felt these "accusations on [her] character" were "degrading." Transcript at 8. She requested time to refute the accusations and consider how the employer was treating her. She also wanted time to consider the proposed changes to the terms of her employment going forward in not receiving all mileage paid between worksites and having to repay the employer approximately $1,500.00. The employer gave claimant until Monday, August 29, 2022, to consider the situation. Claimant decided to voluntarily turn in her laptop to her supervisor in the meantime. Claimant did not work from August 26, 2022, through August 29, 2022.

(6) On August 29, 2022, claimant emailed the employer's chief executive detailing the events of August 25, 2022, stating that she believed she had been discharged since her access to work email and payroll had been removed over the weekend. Claimant nonetheless offered to return to work the following day. The employer responded by sending an "updated" written offer of employment, nearly identical to the one she accepted on February 10, 2022, but changing the provision for "mileage paid between sites" to paying it only for travel between two specific school districts. EAB Exhibit 1 at 18. The employer also scheduled a meeting with claimant for the following morning.

(7) On August 30, 2022, the employer met with claimant and presented her with a "final written warning." Exhibit 1 at 2. Claimant had not received any prior warnings during her employment. The warning stated that the parties had "discussed" in January 2022 that claimant would only be paid mileage for travel between two school districts and that an audit found she "had multiple fraudulent mileage expenses." Exhibit 1 at 2. It further stated she did not use proper expense forms or fill them out correctly and that the mileage stated on the forms did not equate to the distance traveled. Exhibit 1 at 2. Among other things, the warning required that, "going forward," claimant had to repay the employer "$783.65 in fraudulent mileage expenses." Exhibit 1 at 2. The employer did not furnish claimant with detailed evidence of each alleged mileage discrepancy.

(8) During this meeting, claimant attempted to question the employer's alleged discrepancies from the audit, but her questions were "dismissed" with the admonishment they "weren't there to argue." Transcript at 20. The "final written warning" stated that claimant had "been given the opportunity to

provide feedback and input into the [disciplinary] process" and the updated employment offer stated that if claimant had "any questions, please do not hesitate to contact us." EAB Exhibit 1 at 18-21. Nonetheless, the employer's representatives left the meeting as claimant attempted to ask questions about the documents, and claimant was then asked to leave the building. Claimant did not return to work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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).

Though it was claimant's idea to leave her work laptop with the employer while taking time off to consider the employer's accusations of fraud and proposed changes to the terms of her employment, the employer then removed her access to some work features such as email prior to August 29, 2022. Claimant therefore asked the employer if she had been discharged, and they responded by scheduling a meeting for August 30, 2022.

On August 30, 2022, the employer proposed amending the terms of employment under which claimant had been working, indicating that continuing work was available to claimant. The record does not show that the employer ever disallowed claimant from continuing to work, and the employer did not sever the employment relationship by proposing amendments to the employment terms. Claimant did not agree to those amended terms or return to work, thereby voluntarily quitting.

Voluntary quit. 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 and the employer agreed in writing at the start of claimant's employment that claimant would be reimbursed for all mileage between worksites, and the employer paid the mileage claimed for more than five months. The employer's contention that claimant was aware of a different oral agreement, contrary to the express terms of the written agreement, is not supported by the record. The employer's emails to claimant regarding mileage in March 2022, April 2022, and July 2022 all supported claimant's belief that she was acting in accordance with the written employment agreement and the employer's mileage reimbursement policies.

Claimant was dismayed at the employer's demands of August 25, 2022 and August 29, 2022 that she repay the mileage reimbursement she believed she had properly received under the written agreement. Compounding that dismay was the employer's issuance of a "final" written warning, though the record is devoid of evidence of any prior disciplinary action against claimant. She took further issue with the

warning describing her mileage reimbursement requests as "fraudulent." The record does not show that the employer presented claimant with evidence of every worksite to which she traveled during the course of her employment and how that record of travel differed from what she claimed on the reimbursement forms. In the absence of such evidence, claimant was not given a meaningful opportunity to question or rebut the employer's suppositions about her travel or claim forms, and she did not have access to potentially exculpatory evidence on her work laptop and email over the weekend preceding the August 30, 2022 meeting.

In their written argument, the employer asserted that claimant did not face a grave situation because their allegation of fraud was supported by claimant making objectively impossible claims for mileage, such as claiming travel on June 31, 2022, a date that did not exist. Employer's Written Argument at 3. However, claimant's methods of recording and reporting her mileage, of which the employer tacitly approved for more than five months, allowed for the possibility of honest errors which may have resulted in overpayment or underpayment when reconciled over the entire course of her employment. In the absence of a full accounting of all of claimant's work travel and an opportunity for claimant to explain each discrepancy, neither of which transpired prior to the employer's declaration that she was fraudulently overpaid, the employer could not have determined with sufficient certainty that claimant was overpaid, nor that any overpayment was due to fraud rather than error. Under the circumstances, the employer's demand that claimant reimburse $783.65, to which claimant still felt she was entitled, while accusing her of fraud in the absence of sufficient corroborating evidence or a reasonable opportunity to refute the allegation, was a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

During these events, claimant requested time off to think about how to respond to the employer's allegations and demands. Claimant wrote to the employer's chief executive for assistance, and met with her supervisor and other superiors. Claimant attempted to ask questions about the allegations and demands, but the employer refused to engage with her and asked her to leave the building. Any further attempts to refute the fraud allegation or continue working for the employer without agreeing to repay the $783.65 in dispute appeared to be futile. Claimant therefore exhausted all reasonable alternatives to leaving work.

Because claimant left work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit with good cause, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-206949 is affirmed.

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

DATE of Service: <u>February 2, 2023</u>

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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