

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1192

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 9, 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 May 15, 2022 (decision # 150458). Claimant filed a timely request for hearing. On November 4, 2022, ALJ Clemons conducted a hearing, and on November 10, 2022 issued Order No. 22-UI-207070, affirming decision # 150458. On November 29, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Neighbor Impact employed claimant from October 19, 2017 until May 20, 2022. Claimant held multiple positions during her work tenure at Neighbor Impact, but most recently worked as an operations coordinator.

(2) The employer maintained a wage scoring system in which each position was scored by an algorithm and then received a set pay range based on the score. The employer also maintained a wage transparency policy that allowed supervisors to view job descriptions, the associated pay ranges, and the employees currently in each position and their salary. The employer maintained the wage transparency policy and scoring system throughout claimant's employment. During her employment, claimant applied to numerous positions with a higher pay range, but was unsuccessful in obtaining these positions. Exhibit 1 at 14.

(3) In late 2017, the employer's director entered a meeting the claimant was in and "berated us for having errors in our forms." Exhibit 1 at 16. Claimant was scared of this individual, whom she believed

had “a yelling tone,” would cut people off, slam his hands down, and slam boxes around. Transcript at 19.

(4) On October 8, 2021, claimant sent her supervisor a letter detailing issues she had with the human resources director. Claimant was concerned about an incident in which claimant and the human resources director were in the bathroom and the human resources director approached claimant about being in a commercial for the employer. Claimant felt this was an inappropriate way to approach her and that she was approached because of her LGBTQ status. Exhibit 1 at 20. Claimant believed that after she refused to be in the commercial “I didn’t feel as connected to the team and HR[.]” Transcript at 41. During another interaction, the human resources director discussed a former employee negatively with claimant. Exhibit 1 at 20.

(5) In late 2021, claimant attended a winter leadership retreat for the employer. Claimant believed that her invite was an afterthought and only occurred because she asked if she could attend. Exhibit 1 at 16. At this retreat, claimant agreed to be a member of a diversity, equity, and inclusion group, but believed that she was included because of her LGBTQ status. Exhibit 1 at 17. During a training for this group, the director discussed concern about how “white men in his organization found it hard to have conversations with people of color, especially hard conversations[.]” Exhibit 1 at 17. Claimant was embarrassed by the director’s discussion.

(6) On January 11, 2022, claimant provided the employer with a two-week notice. In this notice claimant stated that the work environment was toxic, that she was in fear of interacting with the director and the human resources director, and that she was underappreciated. Exhibit 1 at 25.

(7) On January 21, 2022, claimant met with the employer’s director to discuss the issues raised in claimant’s notice and continued employment. At this meeting, the director apologized for the behavior of the human resources director, and told claimant he would look for a new role for her within the agency. Exhibit 1 at 22. Following this meeting, claimant withdrew her resignation and continued to work for the employer.

(8) On April 12, 2022, claimant attended a weekly zoom meeting of the employer’s leadership team. At the meeting, the employer discussed their wage transparency policy and displayed a list of job descriptions, along with the associated pay range and the current employee in each position. Claimant’s position, name, and pay rate were displayed to everyone in the meeting. Claimant was embarrassed to have her name and pay rate displayed in the meeting. However, this information was already readily available to everyone at the meeting.

(9) On April 18, 2022, claimant informed her supervisor that she was upset that her name and wage had been shared in the leadership meeting on April 12, 2022. Claimant’s supervisor told her that she would look into it.

(10) On May 3, 2022, claimant spoke with her supervisor and determined that her supervisor had not followed up on her concern regarding her name and wage being shared in the April 12, 2022 meeting.

(11) On May 6, 2022, claimant notified the employer that she would resign effective May 20, 2022. Claimant worked throughout this notice period and then quit on May 20, 2022.

CONCLUSION AND REASONS: Claimant 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.

The record shows that the primary reason claimant left her position was her pay rate being displayed in a leadership meeting on April 12, 2022. Claimant testified that having this information displayed was the “straw that broke the camel’s back.” Transcript at 6. However, the information shared was in accordance with the employer’s wage transparency policy and was shown for training purposes. Claimant’s salary was revealed to individuals who already had access to the information and it included the salary information of numerous employees, not just claimant. As such, claimant’s information was never revealed to anyone who should not have had access to it, and claimant was not specifically isolated or targeted. While claimant was embarrassed about how the company shared this information, she has not shown that the company intended this or that the employer violated her privacy by oversharing her information. As such, claimant has not shown that displaying this information in a leadership training session created sufficient gravity such that a reasonable and prudent person of normal sensitivity would have left work when she did.

Related to this concern, claimant also quit because she was dissatisfied with her pay rate. The record shows that she disagreed with how human resources calculated her wage, but was unsuccessful in getting human resources to recalculate it, or in obtaining a more lucrative position within the company. However, claimant has not shown that her rate was calculated inaccurately, simply that she disagreed with the outcome. In addition, the record does not show the employer hired other candidates for the positions that claimant applied to because of malfeasance or intentionally disfavoring claimant’s application. Though claimant was dissatisfied her pay rate, this dissatisfaction does not establish sufficient gravity that a reasonable and prudent person would have quit work.

Claimant also left work because of interpersonal conflicts with the employer’s director and human resources director. Though the only specified incident between the director and claimant occurred in 2017, the record shows that claimant was scared of the director because of he would yell and slam his hands or boxes down. However, the record also shows that claimant first notified the employer of her fear of the director in her initial resignation letter on January 11, 2022. Following this submission, she met with the director on January 21, 2022. After this meeting, claimant withdrew her resignation and there is no evidence in the record of any further incidents with director. Absent such evidence, the record does not show that the director’s behavior would have caused a reasonable and prudent person to leave work when claimant did. Further, while the record shows that the human resources director may have acted unprofessionally, there is nothing to show that this affected claimant’s employment. Claimant felt uncomfortable with how the human resources director approached her to be in a

commercial and felt less connected to the team after she refused. However, the record does not show that the employer did anything to alter claimant's employment as the result of her refusal to participate in the commercial. Additionally, this incident occurred six months before her resignation and the record does not show that its effects persisted through May 2022. Additionally, while it may have been inappropriate for the human resources director to discuss a former employee negatively to claimant, there is nothing in the record to show that this altered claimant's employment in any way or created a grave situation for claimant.

Lastly, claimant left work because she believed that she was treated differently because of her LGBTQ status. Claimant believed that she was recruited for a commercial and selected to be a member of the diversity, equity, and inclusion group because of her LGBTQ status. However, the record does not show that either of these incidents altered claimant's duties or that she suffered any negative employment consequences as a result of either incident. Additionally, both of these incidents occurred at least 4 months before claimant resigned. As such, the record does not show that a reasonable and prudent person would have left work when claimant did because due to being treated differently based on her LGBTQ status.

For the above reasons, claimant quit work without good cause and is disqualified from receiving benefits.

DECISION: Order No. 22-UI-207070 is affirmed.

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

DATE of Service: January 31, 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.

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