

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1202

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective September 11, 2022 (decision # 111552). Claimant filed a timely request for hearing. On November 15, 2022, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on November 30, 2022 issued Order No. 22-UI-208505, affirming decision # 111552. On December 5, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Town of Lakeview employed claimant as an emergency medical dispatcher and firefighter from about September 2018 until September 18, 2022. Claimant's immediate supervisor was the director of the department. Claimant was the only female in the 9-1-1 department.

(2) Claimant's schedule consisted of five 24-hour shifts in a row, followed by two days off. Every five weeks, claimant was given five days off for the following ten-day period. During each shift, claimant would alternate between six hours of dispatch work and six hours of firefighter work.

(3) Claimant resided in Lakeview, Oregon. Lakeview and the surrounding Lake County had a population of approximately 7,000 to 10,000, and had limited medical or mental health services available. Claimant typically travelled to Klamath Falls, Oregon, which was the closest major city and was about 100 miles away, for her own medical appointments.

(4) Claimant's job exposed her to distressing events, such as reports of drowning children. Over time, the cumulative effect of being exposed to such events had a negative impact on claimant's mental health. Claimant eventually began experiencing panic attacks that resulted from taking dispatch calls. Although claimant typically remained able to take calls while she was suffering from a panic attack, she would "immediately get sick" after concluding a call, including getting physically ill. Transcript at 11. Towards the end of her tenure with the employer, claimant became concerned that her panic attacks could become severe enough to keep her from being able to adequately perform her duties as a

dispatcher. The stress from work caused claimant to feel “extremely angry” and to hate going to work. Transcript at 15.

(5) In addition to her concerns about being able to perform her work, claimant’s mental health issues negatively impacted her personal life. Claimant’s marriage began to suffer, as her husband “took a lot of the brunt” of her anger and anxiety. Transcript at 16. Claimant sought counsel from her husband, the chaplain who worked for her town’s fire department, and friends who worked in the same field, and “was advised to take a step back” from her role with the employer. Transcript at 15. Claimant’s husband told her, “...you need to quit. It’s affecting us and our marriage.” Transcript at 48.

(6) Claimant did not speak to her immediate supervisor about the toll that the stress from work had been taking on her mental health because she understood it to be “taboo to talk about mental health” in her field, and people with mental health issues in the field were “considered [a] weak link” and “[un]trustworthy.” Transcript at 21, 28. Claimant’s beliefs were informed by incidents such as one in which she and her supervisor responded to calls relating to a helicopter crash. Claimant felt that exposure to the incident was traumatic to her and her coworkers, and suggested to her supervisor that they “need[ed] to talk to somebody about” it. Transcript at 29. However, claimant had a difficult time convincing her supervisor to agree to even bring in the chaplain to speak to them about the incident.

(7) On or prior to September 12, 2022, claimant’s supervisor changed the department’s schedule without meaningful notice to claimant or her coworkers. This schedule change would have required claimant to work on days that she was previously scheduled off, and would have required her to reschedule three medical and dental appointments that she had scheduled for one of those days.

(8) When claimant asked the supervisor to change her schedule back, he refused to do so. During the discussion about the schedule, the supervisor belittled claimant and used a sexist slur against claimant, telling claimant that she was “being a bitch,” which offended claimant. Transcript at 38. The supervisor informed claimant she would be discharged if she did not report to work as scheduled. Thereafter, claimant returned to her duties. However, claimant felt that she “just couldn’t stay and continue to be miserable and angry... any longer,” and voluntarily quit working for the employer that day. Transcript at 47.

(9) Prior to quitting, claimant did not attempt to speak to the employer’s human resources department or anyone else higher in the employer’s chain of command. She did not do so because there had been a “big rift” between her department and the rest of the town’s government, and therefore it did not occur to her to do so. Transcript at 41. Prior to quitting, claimant spoke to a representative from her union about the schedule change, but he told her that the employer was entitled to change her schedule and that she was an at-will employee.

(10) Claimant did not have ready access to mental health services in her area. Prior to quitting, she spoke to colleagues in her field who had connections to mental health professionals who specialized in matters relating to work in claimant’s field. Claimant was still waiting for a referral at the time that she quit work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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 order under review found that “[claimant’s] anger was impacting her health and her relationship and potentially it could affect someone who called for her emergency assistance,” and thereafter concluded that claimant’s circumstances were grave. Order No. 22-UI-208505 at 3. The order subsequently concluded that claimant quit because she acted “in the heat of the moment when her work schedule was changed by her supervisor” which she was “unable to emotionally cope with” due to the other problems she was facing at work; and that this did not constitute good cause for quitting because she failed to seek reasonable alternatives such as using sick leave, applying for a leave of absence, or contacting the city manager or union for assistance. Order No. 22-UI-208505 at 3. The record does not support this conclusion.

As a preliminary matter, the proximate cause of claimant’s decision to quit when she did was two fold. First, claimant was experiencing a worsening ability to cope with the stress of the job, which was negatively impacting her professional and personal life. Second, she was subjected to a last-minute schedule change which would have delayed her ability to obtain medical care, and then subjected to an offensive slur based on her gender when she attempted to resolve the matter with her supervisor. In light of claimant becoming physically ill after answering 9-1-1 calls, her concern that she would eventually be unable to respond to emergency calls at all, the toll the job was taking on her marriage, and her supervisor using a slur against her when she attempted to resolve an important scheduling conflict, claimant has met her burden to show that her circumstances were grave.

Further, the record shows that claimant had no reasonable alternative but to quit. Neither using sick leave nor taking a leave of absence would have been reasonable alternatives to quitting because it is likely that the stressors which caused claimant’s panic attacks would persist following her absence. Although claimant did not seek assistance from the human resources department or anyone higher in the employer’s chain of command, the record contains no indication that either of these would have been able to assist with the mental health issues claimant was experiencing when answering 9-1-1 calls. Additionally, while working with a mental health provider may have helped claimant better cope with the stress of the job, she had made efforts to obtain referrals and was still waiting for a referral at the time that she quit. Given the exigency of claimant’s circumstances—a growing concern that she would be unable to perform her job, advice from her husband and others in her life that she should quit, and her supervisor’s seeming lack of concern for her troubles, in addition to the supervisor’s use of a slur against claimant based on her gender, no reasonable and prudent person would have continued working for an additional period of time.

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

DECISION: Order No. 22-UI-208505 is set aside, as outlined above.

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

DATE of Service: **February 8, 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.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.