

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1230

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 4, 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 benefits effective October 16, 2022 (decision # 113247). Claimant filed a timely request for hearing. On December 6, 2022, ALJ Ainardi conducted a hearing, and on December 7, 2022 issued Order No. 22-UI-209109, affirming decision # 113247. On December 13, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB received written arguments from claimant on December 15, 2022 and January 3, 2023. EAB did not consider claimant's December 15, 2022 argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's January 3, 2023 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 him 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 January 3, 2023 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Vitamin Cottage Natural Food Market employed claimant as a vitamin manager from January 15, 2022 until October 18, 2022.

(2) Due to interpersonal conflicts, claimant had multiple discussions with the store director about stepping down from his current position as vitamin manager and taking an assistant position.

(3) On October 18, 2022, the employer placed claimant on suspension pending an investigation into three reported incidents. It was alleged that claimant showed a colleague pornographic images, that he brought an adult toy to work, and that he was telling his colleagues about a sexual experience.

(4) On October 18, 2022, after claimant was suspended, he was frustrated and became intoxicated. Claimant then sent a text message to the store director that denied the allegations. At the end of the message claimant stated, "I quit. Please let me know when I can collect my belongings." Transcript at 18.

(5) The employer understood this to be claimant's resignation, cancelled their investigation, and posted an advertisement for claimant's position on Indeed.com.

(6) Around October 20, 2022, claimant sent a text message to the assistant store director inquiring why his position was posted on Indeed.com. The assistant store manager did not respond to this message.

(7) On October 26, 2022 claimant sent a message to the store director stating that he had not intended to quit, but rather intended to resign the vitamin manager position and accept an assistant position. Transcript at 11. The store director did not respond.

CONCLUSIONS AND REASONS: Claimant quit work without good cause and is disqualified from benefits.

Nature of the Work Separation. If the 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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The record shows that the work separation was a voluntary leaving on October 18, 2022. On this day, the claimant sent a text message to the employer stating, "I quit. Please let me know when I can collect my belonging." Transcript at 18. At hearing and in written argument, claimant maintained that he did not intend to quit, and that this message was a request to move into a lower level position. However, his statement, "I quit" is not qualified in any way and reflects a severing of the employer-employee relationship, not a request to move to another position. Further, his request to collect his belongings is inconsistent with a belief that the employment relationship was continuing. Claimant's subsequent attempted contacts on October 20, 2022 and October 26, 2022, occurred after the relationship was severed and were therefore attempts to rescind the resignation and negotiate a different position with the employer. The employer was under no obligation to respond or accept them, and their refusal to accept them does not change the work separation analysis. See *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982) (a work separation remains a voluntary leaving even if the employer did not formally accept or reject claimant's initial resignation because rejection of the attempted rescission is effectively an acceptance of the original resignation).

Even if claimant intended his message to be a request to move to a lower level position, there is nothing in the record to show the employer would have known this or should have interpreted the message in that way. Claimant testified that he had previous discussions about moving to a different role within the employer, but this alone is insufficient to establish that the employer would have interpreted the text message to be a request to move an alternate position. Nothing in the text message suggests that

claimant intended to keep working for the employer. Further, claimant did not contact the store director to clarify his intent until October 26, 2022. At this point, the employer had already cancelled their investigation and begun searching for someone to fill claimant's position.

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) (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 has not met his burden to show that his voluntary leaving on October 18, 2022 was with good cause. The record shows that claimant quit work because he was frustrated over his suspension and the pending investigation against him. Claimant denied the allegations, but has not presented evidence that the employer was unwarranted in investigating them, or that the investigation would have been conducted in a biased manner. Claimant therefore had the reasonable alternative of awaiting the results of the investigation. Further, while a lengthy unpaid suspension could cause significant hardship to an employee, here claimant voluntarily left the employer on the same day that he was suspended. While frustration over a suspension and pending investigation is understandable, claimant has not met his burden to show that it created a situation of such gravity that a reasonable and prudent person would have no reasonable alternative but to leave work.

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

DECISION: Order No. 22-UI-209109 is affirmed.

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

DATE of Service: February 13, 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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