

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0029

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 14, 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 October 9, 2022 (decision # 123146). Claimant filed a timely request for hearing. On December 14, 2022, ALJ D. Lee conducted a hearing, and on December 16, 2022 issued Order No. 22-UI-210190, affirming decision # 123146. On December 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written 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 or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Crocker Cars, Inc. employed claimant as a salesperson at their car dealership from November 14, 2014 until October 10, 2022.

(2) Prior to the work separation, claimant and his son borrowed a trailer from the employer and stored it at their home.

(3) On or about October 8, 2022, the employer learned that claimant's son bought a car, but not from the employer's car dealership. This angered the dealership's owner. The owner had been frustrated with claimant over his work performance prior to this, but claimant's job had not been in jeopardy.

(4) On October 10, 2022, the owner confronted claimant about his son's car purchase. He told claimant that he was "this close to fucking firing [him]," and to go home while the employer thought about the status of his employment. Transcript at 19. Claimant left his shift early as instructed.

(5) Approximately an hour after claimant left, he returned to the dealership to return the borrowed trailer. He shook the employer's owner's hand, said "Good luck," and left. Transcript at 19. The owner

repeatedly asked claimant if this meant he was quitting, but claimant did not answer. Claimant did not thereafter seek to clarify the status of his employment and did not return to work for the employer.

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).

The parties disputed the nature of the work separation. Claimant testified that the owner threatened to fire claimant, but did not state that the owner actually said he was firing him. Transcript at 6-7. Both claimant and the employer testified that when claimant arrived to return the trailer, the employer asked claimant if he was quitting after he shook the owner’s hand and said, “Good luck.” Transcript at 14, 17. The parties’ accounts then differed. The owner testified that claimant’s reply about whether he was quitting was, “Nope, you fired me.” Transcript at 24. The owner said he told claimant “three to five times, as [they] were walking out, [‘L]isten, I’m not firing you. I just need some time to think[.]” Transcript at 24. Claimant testified that after he shook the owner’s hand, he did not answer the question about whether he was quitting and walked out with the owner following him, “yelling and screaming at [claimant].” Transcript at 14. Even by claimant’s own account, claimant was aware that the employer had not discharged him by the time he returned the trailer since the interaction ended with the employer asking if claimant was quitting, and claimant failing to deny that he was quitting. Therefore, the record shows continuing work was available to claimant at that time and the employer had not discharged claimant. When claimant failed to either return to work for his shift the following day or contact the employer, this confirmed that claimant had intended to sever the employment relationship the previous day. Accordingly, the work separation was a voluntary leaving that occurred on October 10, 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). “[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 quit working for the employer because the employer had become angry that claimant’s son purchased a car elsewhere, and disciplined claimant by sending him home early from work, threatening his job, and using foul language. The order under review concluded that claimant left work without good cause because the employer’s discipline of claimant by sending him home did not constitute a grave situation. Order No. 22-UI-210190. The record does not support this conclusion.

The parties' accounts of October 10, 2022 differ as to what precisely the owner said and the tone and volume used, but both agreed the owner used foul language toward claimant and was at least contemplating aloud firing claimant over his son's car purchase. Transcript at 12, 19. Claimant's son's choice of where to purchase a car was outside of claimant's reasonable control, was not related to performance of his job duties, and did not merit disciplining claimant. When the owner disciplined claimant by sending him home, along with using foul language toward him and telling him that he was close to firing him, claimant faced a grave situation because he considered the work environment too hostile to continue working for the employer. As claimant had done nothing in connection with his work to provoke such treatment, the record supports the inference that he reasonably feared that either the mistreatment would continue or that the employer would discharge him despite having committed no misconduct, and he more likely than not quit for that reason. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work under the circumstances.

Further, claimant did not have reasonable alternatives to quitting. The owner was angry about something someone other than claimant did, leading him to become hostile towards claimant and discipline him. This suggests that any attempts to persuade the owner to act civilly and rescind the discipline would have been futile. Additionally, despite threatening claimant's job, sending him home without justification, and using foul language toward him, the owner testified that claimant did not face "even close to a hostile work environment." Transcript at 32. The owner's failure to recognize the impact of his words and actions on claimant showed that any attempts by claimant to maintain a professional and civil employment relationship would have been fruitless. Therefore, claimant voluntarily quit work for a reason of such gravity that he had no reasonable alternative but to do so.

For these reasons, claimant voluntarily left work with good cause, and is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 22-UI-210190 is set aside, as outlined above.

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

DATE of Service: February 28, 2023

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.

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.surveymzmo.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 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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