

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0033

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation (decision # 125332). The employer filed a timely request for hearing. On December 16, 2022, ALJ Enyinnaya conducted a hearing, and on December 23, 2022 issued Order No. 22-UI-210868, reversing decision # 125332 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective October 10, 2021. On December 29, 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). The employer's argument contained information that was not part of the hearing record and was not relevant and material to EAB's determination. 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 the employer's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Formations, Inc. employed claimant as an installer for approximately ten years until October 16, 2021.

(2) On or around October 12, 2021, one of the subcontractors ("RC") with whom claimant was assigned to work on a jobsite arrived several hours late for work. Claimant generally considered RC to be his

friend, but also found him difficult to work with. When claimant told RC that it was important to show up to work on time, RC “got in... [claimant’s] face very aggressively.” Transcript at 7. Afterwards, claimant spoke with one of the company’s principals to express concerns about RC’s work ethic, but did not mention RC’s hostility towards claimant. Thereafter, the principal spoke to RC about claimant’s concerns about his work ethic. Claimant also raised the concerns about RC with his project manager, but did not mention RC’s hostility. Claimant did not mention the hostility because he still considered RC a friend at that point, and “wasn’t trying to get him in trouble.” Transcript at 15–16.

(3) On October 15, 2021, RC, who was on the job site with claimant, became angry and threatened to “kick [claimant’s] ass” because claimant had complained about RC’s work ethic to the employer. Transcript at 8. Claimant felt “very intimidated” by the encounter. Transcript at 9. Later that day, claimant had a conference call with his project managers and two of the company’s principals. During the call, claimant asked that RC be removed from the job that claimant had been working on because of RC’s work ethic. Claimant did not mention RC’s aggression or threats of violence towards claimant during the call. The employer agreed to remove RC from the job.

(4) On October 16, 2021, RC gave three other subcontractors who had been working with claimant a ride to claimant’s jobsite. When they arrived on-site, the group of subcontractors “got in [claimant’s] face again” and threatened to beat him up. Transcript at 8. Claimant felt “traumatized” by the incident. Transcript at 10. Afterwards, due to the subcontractors’ hostility and threats, claimant sent the employer an email to inform them that he had resigned.

(5) Before claimant quit, the employer was not aware that the RC or the other subcontractors had made threats against claimant or acted in a hostile manner towards him. Had the employer been aware of the subcontractors’ behavior, they would have taken “appropriate steps” to remedy the situation. Transcript at 23.

CONCLUSIONS AND REASONS: Claimant voluntarily 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.

Claimant voluntarily quit work due to a recent pattern of hostility and threats of violence from subcontractors with whom he had been working. Those threats were apparently motivated by feedback that claimant gave to RC and to the employer about RC’s work ethic, which ultimately led to RC’s removal from the job. These threats understandably made claimant feel “intimidated” and “traumatized.” Given the threats of violence and the feelings they caused claimant to experience, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have quit if there were no reasonable alternative.

However, claimant has not met his burden to show that he had no reasonable alternative but to quit. At hearing, claimant explained that while he did report RC's work performance issues to the employer, he did not mention RC's hostility when he initially spoke to the employer because claimant considered RC to be his friend and "wasn't trying to get him in trouble." Transcript at 16. Claimant did not otherwise explain why he failed to inform the employer about the threats against him prior to quitting. Doing so would have been a reasonable alternative to quitting. The record shows that when claimant informed the employer of his concerns about RC's work ethic, the employer first spoke to RC about the issue, and after claimant asked for RC to be removed from the job, complied with claimant's request. Further, one of the employer's principals testified at hearing that they would have taken action had they known about the hostility and threats that claimant faced. Transcript at 23. Claimant did not offer evidence to contradict this assertion. The record therefore shows that the employer likely would have intervened and stopped RC from continuing to make threats against claimant if claimant had informed the employer of the threats. Because claimant did not do so, he failed to seek reasonable alternatives to quitting.

For the above reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective October 10, 2021.

DECISION: Order No. 22-UI-210868 is affirmed.

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

DATE of Service: February 28, 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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