

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0040

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 18, 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 November 6, 2022 (decision # 150108). Claimant filed a timely request for hearing. On December 20, 2022, ALJ Lucas conducted a hearing, and on December 21, 2022 issued Order No. 22-UI-210589, affirming decision # 150108. On January 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer both filed written arguments. Both parties' arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond their reasonable control prevented them 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 the parties' arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) MiaDonna & Company, LLC employed claimant as a jewelry specialist from March 21, 2022 until November 9, 2022.

(2) In approximately 2001, claimant was diagnosed with post-traumatic stress disorder (PTSD). Claimant obtained treatment for the condition, but some symptoms of the condition persisted.

(3) The employer paid their employees twice per month. By policy, the employer's paydays were the 5th and 20th of each month, although in practice the employer often issued paychecks earlier than the 5th or 20th of the month.

(4) During her time working for the employer, claimant had concerns about comments that her manager made, which claimant believed to be homophobic, racist, transphobic, or otherwise discriminatory. Claimant also felt that her manager acted "disrespectful" and "created a hostile work environment."

Transcript at 5. Claimant's work environment, coupled with claimant's PTSD, sometimes caused claimant to experience panic attacks.

(5) In or around early June 2022, claimant raised a concern with the employer regarding the accuracy of the paycheck she had received for the pay period of May 15, 2022 through May 30, 2022. On Saturday, June 4, 2022, the employer's human resources (HR) manager told claimant that she would check with the employer's legal consultant regarding claimant's concerns. The HR manager also told claimant that she would immediately issue payment for wages that claimant claimed were missing from her paycheck, and would pay claimant the difference on the following Monday if the employer owed any remaining balance to claimant. The employer ultimately resolved the matter, but claimant remained concerned about "insecurities with pay." Transcript at 6.

(6) On or around October 4, 2022, claimant spoke to the HR manager to discuss her concerns regarding the "hostile work environment" that claimant felt was the result of her manager's behavior. Transcript at 5. Thereafter, the HR manager began an investigation into claimant's allegations, and took preliminary steps to address claimant's concerns such as updating the employer's code of conduct.

(7) On October 20, 2022, claimant worked her last shift for the employer. Thereafter, she took a leave of absence due to illness and other issues.

(8) On November 1, 2022, the employer issued claimant a paycheck for the pay period of October 16, 2022 through October 31, 2022. Later the same day, the employer voided claimant's paycheck because they discovered that they needed to deposit the check into a new bank account. On November 4, 2022, claimant contacted the HR manager about inaccuracies on the paycheck. The previous check failed to reflect that the employer had given claimant a raise effective that pay period, that claimant should have received pay for the several days of the pay period prior to her leave of absence, and should have been paid the balance of her sick leave. On the same day, the HR manager conveyed this information to the payroll team, who initiated payment to claimant via wire transfer that day.

(9) On November 5, 2022, claimant found that she had not yet received her paycheck, and decided that day that she planned to quit. Claimant's decision was informed by several factors, including the issues she had been having with her manager. However, the "insecurities with pay" that resulted from the voided check and subsequent delay in pay "was essentially what . . . pushed [claimant] completely over the edge" that day. Transcript at 7.

(10) On November 7, 2022, claimant received her pay for the preceding pay period.

(11) On November 9, 2022, claimant notified the employer that she was resigning effective immediately.

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). Claimant had PTSD, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant voluntarily quit work due in part to concerns about statements that her manager made which claimant believed were hostile or discriminatory. However, at hearing, claimant stated that the factor that “pushed [her] completely over the edge” and led her to quit at the time that she did was the matter involving her paycheck for the pay period of October 16, 2022 through October 31, 2022. Transcript at 7. Claimant further testified that she made the decision to quit on November 5, 2022 when she found that she had not yet received her paycheck for that pay period.¹ Transcript at 7–8. Additionally, while the record shows that claimant spoke to the HR manager in early October 2022 about her concerns regarding claimant’s manager, claimant did not offer evidence to show that the problems she alleged continued after that discussion. The record therefore shows that the proximate cause of claimant’s decision to quit at the time that she did was the matter involving her paycheck, which she had not received as of the date on which she decided to quit. Therefore, the question of whether claimant voluntarily quit with good cause turns on whether that reason for quitting constituted “good cause” under OAR 471-030-0038(4).

The record does not show that the matter involving claimant’s paycheck constituted a reason of such gravity that no reasonable and prudent person with the characteristics and qualities of an individual with PTSD would have quit. Claimant characterized the matter—including both her early November 2022 paycheck as well as her early June 2022 paycheck—as “insecurities with pay.” Claimant’s characterization of the paycheck problems suggests that she believed there were systemic problems regarding her pay, but the evidence in the record does not support this contention. In both instances, although claimant received her paycheck later than she anticipated, the employer actually initiated claimant’s pay on time, per their policy of issuing paychecks on the 5th and 20th of each month. These instances were six months apart, were the results of errors caused by occasional changes or inconsistencies (such as a change in claimant’s bank account) rather than systemic problems, and were ultimately corrected in claimant’s favor. Further, claimant did not allege any material harm that resulted from the delays in payment. A reasonable and prudent person, suffering from PTSD, would not have left work for that reason. Given all of the above, claimant has not met her burden to show that her concerns constituted a reason of such gravity that she had no reasonable alternative but to quit.

Claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective November 6, 2022.

DECISION: Order No. 22-UI-210589 is affirmed.

¹ The record suggests that while the employer had initiated the wire transfer of claimant’s paycheck on Friday, November 4, 2022, claimant’s bank may not have made the money available until the following Monday, November 7, 2022. *See* Transcript at 23.

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

DATE of Service: March 3, 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.

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