

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0091

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and was therefore disqualified from receiving unemployment insurance benefits effective June 7, 2020 (decision # 115937). On January 4, 2021, decision # 115937 became final without claimant having filed a request for hearing. On January 12, 2021, claimant filed a late request for hearing. On December 15, 2022, ALJ Chiller conducted a hearing, and on December 23, 2022 issued Order No. 22-UI-210870, concluding that claimant had good cause to file the late request for hearing and affirming decision # 115937. On January 12, 2023 claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to file the late request for hearing is **adopted**. The remainder of this decision relates to the portion of the order under review that concluded claimant was discharged for misconduct and therefore disqualified from receiving benefits.

FINDINGS OF FACT: (1) Scott's Roofing, Inc. employed claimant as a laborer from May 19, 2020 until June 10, 2020.

(2) Throughout claimant's employment, he resided with a coworker. The employer's owner sometimes transported claimant and the coworker from their residence to the worksite.

(3) During the weekend of June 7, 2020, the coworker assaulted claimant while off duty. Concerned about his safety, claimant decided to move out of the residence, but had nowhere else to live and no means of transportation of his own.

(4) On Monday, June 8, 2020, and Tuesday, June 9, 2020, claimant moved his belongings into storage and made efforts to secure a new place to stay. Claimant was scheduled to work both days but asked the coworker to inform the employer that he would be absent from work as he dealt with the move.

(5) On June 10, 2020, claimant told the owner that he could no longer work for the employer due to being assaulted by the coworker and the fear of having to continue working with him, though claimant desired to keep working for the employer. The owner responded by threatening to “let [claimant] go.” Transcript at 23. Claimant 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 order under review concluded that claimant was discharged for misconduct because the employer would not allow claimant to continue working for a period of time after he had been absent without notice for two consecutive days, which was considered job abandonment under the employer’s attendance policy. Order No. 22-UI-210870 at 4. The record does not support these conclusions.

The employer’s witness testified that they had a policy, of which claimant was aware, that missing two consecutive days of work without notice would be considered a quit by job abandonment. Transcript at 17. The employer’s witness had no first-hand knowledge of claimant’s work separation, but testified that the employer’s records showed that claimant was absent without notice on June 8 and June 9, 2020, and was issued a final check on June 12, 2020. Transcript at 15. Claimant testified that he asked the coworker to relay a message to the employer that he would be absent June 8, 2020. Transcript at 20. Claimant also stated that on June 10, 2020, he told the owner he could not continue working for him, and the owner threatened to “let [him] go” in response. Transcript at 23. These accounts do not necessarily conflict with each other, and demonstrate that claimant did not intend to just abandon his job, since he sent notice to the employer of his absence on June 8, 2020 and initiated contact with the employer on June 10, 2020. However, the record shows that claimant moved to sever the employment relationship on June 10, 2020 when claimant told the owner that he was quitting. Even though the owner was threatening to discharge claimant at the time, claimant acted first in moving to sever the employment relationship. The separation was therefore a voluntary leaving which occurred on June 10, 2020.

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 voluntarily quit working for the employer because he was assaulted by a coworker and feared continuing to have to work with him. Claimant considered the threat to his safety so severe that he missed work for two days while he immediately moved out of the residence he shared with the coworker. Upon informing the employer of the assault, the employer took no action to assure claimant of his safety, and instead, threatened to discharge him. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work for this reason. As the employer's only offered solution was to discharge claimant for reporting the assault, any attempts to seek alternatives to quitting would likely have been futile. Accordingly, claimant faced a situation of such gravity that he had no reasonable alternative but to leave work.

For these reasons, claimant voluntarily quit working for the employer with good cause and is not disqualified from receiving benefits as a result of the work separation.

DECISION: Order No. 22-UI-210870 is set aside, as outlined above.

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

DATE of Service: March 10, 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.

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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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