

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0305

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 12, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 20, 2022 (decision # 130446). Claimant filed a timely request for hearing. On February 27, 2023, ALJ D. Lee conducted a hearing, and on March 6, 2023 issued Order No. 23-UI-218052, affirming decision # 130446. On March 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Too Sweet Cakes LLC employed claimant as a bakery manager from November 4, 2022 until November 20, 2022.

(2) During her approximately two weeks of employment, claimant was frustrated with what she felt was a lack of training and the business being short-staffed. Claimant did not advise the employer of her concerns, though the employer was willing to send in a more senior manager from another bakery to assist in training claimant, or make other changes, had she made her concerns known.

(3) On November 20, 2022, the employer's owner called claimant from another state to discuss her dissatisfaction with claimant's job performance. During the call, claimant discussed the ways in which she was dissatisfied with the employment. Near the end of the call, claimant stated that "it doesn't sound like it's going to work" and the owner agreed. Transcript at 22. Claimant understood the owner's agreement that the employment was not "going to work" to mean that she was being discharged. Transcript at 25-26. Claimant then said, "Best of luck," and ended the call. Transcript at 22. The employer understood these two statements and claimant's ending of the call to mean that claimant had quit work.

(4) Immediately after the phone call, claimant advised the staff present at the bakery that she had been discharged and collected her belongings. A few minutes later, while in her car outside the bakery,

claimant texted the owner, “That conversation ended in an unclear way. Just to be certain, I am not quitting, have I been terminated?” Exhibit 1 at 4. The owner replied, “There’s nothing unclear. You said you quit and best of luck – then hung up the phone.” Exhibit 1 at 4. Claimant then called the owner requesting to return to work, but the owner did not allow her to do so. Claimant did not work for the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily quit without 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). 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 believed that she had been discharged at the moment that the owner agreed with claimant that the employment was not “going to work.” However, the employer’s mere agreement with that sentiment did not objectively signify that the employer was moving to immediately sever the employment relationship. Despite agreeing that the employment was not “going to work,” the employer did not imply that claimant would not be permitted to finish her shift that day, or that she should not report for her next shift. Therefore, the objective evidence shows that the employer allowed claimant to continue working for at least some additional period of time after the employer expressed agreement with claimant’s statement. In contrast, claimant’s statement that she felt the employment was not “going to work,” followed by wishing the owner “best of luck” and ending the call, even if the owner had agreed that the employment was not “going to work,” followed by claimant announcing her departure to the staff and taking her belongings to her car, objectively demonstrated that claimant was unwilling to continue working for the employer for any additional period of time. While claimant may have subjectively believed that the owner’s agreement that the employment was not “going to work” constituted a move by the employer to sever the employment relationship, the objective statements and actions of the parties taken as a whole demonstrated otherwise. The parties’ statements and actions during the call and immediately thereafter objectively demonstrated that claimant first moved to sever the employment relationship without objection from the employer.

Moreover, that claimant immediately attempted to return to the employment but the employer refused to allow her to do so did not change the nature of the work separation. Where a claimant gives notice of their resignation, later attempts to rescind the resignation, and the employer refuses to allow rescission, the work separation remains a voluntary leaving. *Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999). The work separation remains a voluntary leaving even if the employer did not formally accept or reject claimant’s initial resignation because the rejection of the attempted rescission is effectively an acceptance of the initial resignation. *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Accordingly, the November 20, 2022 work separation was a voluntary leaving.

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 work because the owner was dissatisfied with claimant’s work and agreed with claimant’s assessment that the employment was not “going to work,” which claimant thought meant she was being discharged. As discussed above, claimant’s subjective belief that the employer was discharging her, simply by agreeing with that statement, was not supported by objective evidence. Accordingly, that belief did not objectively constitute a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Inasmuch as claimant’s feeling that the employment was not “going to work” also caused her to quit work, claimant testified she felt that way because she was “frustrated with lack of training and lack of team members [and the owner] was frustrated with [claimant’s] lack of progress and not reaching out enough for help[.]” Transcript at 22. The record does not show how, after only approximately two weeks on the job, the pace of claimant’s training or the employer’s staffing levels or expectations regarding performance would have caused a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work. Claimant has therefore failed to demonstrate she faced a grave situation.

Further, even if claimant’s feelings that the employment was not “going to work” were grave, claimant had reasonable alternatives to quitting. The owner testified that claimant never “brought concerns about anything” to her during the course of her employment. Transcript at 7. Claimant did not rebut this assertion. The owner further stated that the purpose of the November 20, 2022 call was to “find out how [the employer] could support [claimant] and what she might need for that,” including having a more senior manager fly in from Arizona to assist in training claimant. Transcript at 7-10. Claimant therefore had the reasonable alternative of raising her concerns with the employer or requesting additional training and guidance from the employer, but claimant failed to do so. Accordingly, claimant has not shown that she had no reasonable alternative but to leave work.

For these reasons, claimant quit work without good cause and is therefore disqualified from receiving benefits effective November 20, 2022.

DECISION: Order No. 23-UI-218052 is affirmed.

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

DATE of Service: April 20, 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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