EO: 200
BYE: 202329

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

624
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0674

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 3, 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 October 16, 2022 (decision # 82335). Claimant filed a timely request for hearing. On December 5, 2022, ALJ Chiller convened a hearing, and on December 6, 2022 issued Order No. 22-UI-208940, dismissing claimant's request for hearing as having been withdrawn. On March 29, 2023, claimant filed a late request to reopen the December 5, 2022 hearing. On May 10, 2023, ALJ Chiller conducted a second hearing, and on May 12, 2023 issued Order No. 23-UI-224829, cancelling Order No. 22-UI-208940 and affirming decision # 82335 on the merits.[1] On May 30, 2023, 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 she did not include a statement declaring that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Hope Loose Tax, Inc. employed claimant as an office manager from December 12, 2021 until October 17, 2022. Claimant had worked for the business for many years under a previous owner and began to work for the employer in December 2021 when they purchased the business.

(2) Shortly after the employer's purchase of the business, claimant and several other long-time employees began to disagree with aspects of how the business was being run, and felt stressed by the work environment. Staff turnover, an increased workload, technological difficulties, and having to deal

[1]. Order No. 23-UI-224829 stated that Order No. 22-UI-208940 "was issued in error, and the hearing was reopened." Order No. 23-UI-224829 at 1. OAR 471-040-0040(1)(a) (February 10, 2012) allows for reopening a hearing only if the requesting party failed to appear at the hearing. However, both parties were present at the December 5, 2022 hearing. Nonetheless, in the interest of judicial economy, this decision reviews Order No. 23-UI-224829 on the merits without regard to the issuance and cancellation of Order No. 22-UI-208940.

with dissatisfied customers as a result of these problems were substantial sources of this stress. Claimant believed that she was losing her hair as a result of workplace stress.

(3) One of the business practices with which claimant disagreed was the employer's use of an Internal Revenue Service (IRS) identification number that had been assigned to the previous owner. The employer's owner believed this use to be proper, while claimant felt that her association with a firm engaging in such use placed claimant in legal jeopardy.

(4) During claimant's employment, the employer's owner's husband, who was not an owner or employee of the business, would visit the workplace and interact with the employees. During one of these visits, the husband offered claimant a hug, which she declined. The offer made claimant uncomfortable. Claimant did not report the incident to the owner.

(5) In July 2022, the employer's computer server malfunctioned, causing a significant and prolonged disruption to business operations. During work to repair the server, the owner mentioned to another employee that she felt that claimant was unintentionally withholding information from her that could aid in recovering the server. Claimant was upset when other employees told her they heard this and she confronted the owner about it. Both parties discussed the matter, and the server was repaired that month.

(6) In August 2022, the employer gave claimant "a significant raise," and on August 26, 2022 held a meeting with claimant and two other employees in which the owner identified the three of them as "team leads" and "managers" and wanted them to be "decision makers" going forward. Transcript at 34.

(7) Also in August 2022, after having interviewed for positions with other employers, claimant decided to start her own business and quit working for the employer. She contacted the Department to inquire about eligibility for a self-employment assistance program.

(8) On September 15, 2022, claimant told the owner that she was resigning, effective October 17, 2022. Claimant resigned as a result of her displeasure with several aspects of the work environment.

(9) At some point after claimant tendered her resignation and before she stopped working for the employer, the owner's husband texted the landlord of the office where claimant was establishing her new business, stating that he was "really glad" claimant and another employee were leaving and "it'll be so much better without them." Transcript at 11-12. Claimant heard that the husband had made a similar comment to a coworker in January 2022 that "things will be better once [claimant and the other employee] are out." Transcript at 10. Claimant stopped working for the employer on October 17, 2022.

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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Per OAR 471-030-0038(5)(b)(G), leaving work without good cause includes leaving work for self-employment.

Claimant began working in self-employment immediately upon separating from the employer, and made arrangements for this venture while still working for the employer. However, claimant did not quit work for self-employment. The record shows that claimant was dissatisfied with working for the employer almost as soon as the employer bought the company in late 2021 and began to institute changes. Claimant began to seek other employment in the summer of 2022 due to this dissatisfaction, and when she was unsuccessful in finding other traditional employment, made arrangements to begin self-employment once she separated from the employer. The record shows that claimant quit work not because she wanted to engage in self-employment, but engaged in self-employment as a means to quit working for the employer due to her dissatisfaction with the job. Accordingly, OAR 471-030-0038(5)(b)(G) is not determinative of whether claimant quit work with good cause.

Claimant voluntarily quit working for the employer because she was dissatisfied with the working environment for a variety of reasons. Claimant alleged that these reasons included statements made by the owner's husband, including a statement he allegedly made to claimant's coworker in January 2022 indicating that he did not want claimant to continue in the employment. The record is silent on when claimant heard about this statement, and therefore it is possible that claimant did not know about it until after she submitted her resignation. The record does not show that claimant complained about this statement to the owner or the husband prior to resigning, which suggests she did not have knowledge of it prior to that time. Further, the evidence presented does not suggest that the employer attempted to convince claimant to resign following the statement. To the contrary, in August 2022, the employer gave claimant a raise and offered her increased responsibility and authority. Even if claimant had learned of the statement prior to quitting, the subsequent actions of claimant and the employer did not suggest that either party took the statement seriously. Claimant has therefore not shown by a preponderance of evidence that the statement was a factor in her decision to resign. Similarly, a statement the husband made to claimant's landlord after claimant's resignation could not have played a part in her decision to submit her resignation, and therefore did not factor into her decision to quit.

However, claimant did show that the husband's offers to hug employees, including claimant, did contribute to her dissatisfaction with the work environment that prompted her to quit. Claimant testified that she declined the offer of a hug and did not report her discomfort at receiving the offer to the employer. Transcript at 11. As claimant did not allege that the husband actually touched claimant, or that he repeated the offer of a hug after she declined it, and the incident did not concern claimant enough to prompt her to report it to the employer, claimant has not established that this constituted a grave situation.

Claimant also alleged that the employer's use of the previous owner's IRS identification number caused claimant's license "through the Oregon Tax Board" to be "on the line." Transcript at 8-9. The employer's owner disagreed with claimant frequently about this issue and maintained at hearing that the employer's use of the number was lawful and proper. Transcript at 8, 28-29. As the evidence is no more than equally balanced as to whether such use was improper, claimant has failed to meet her burden of

proving it was improper by a preponderance of evidence. Even if such use was improper, claimant admitted that, "I don't know if there's any consequence for the employee that was forced to use the wrong number," and that she would "have to look up in the rules" whether any such consequence might flow to claimant. Accordingly, any potential harm to claimant from the use of the number was purely speculative, did not concern claimant enough for her to investigate further during the eleven months she continued to use the number, and therefore did not constitute a grave situation.

Claimant additionally cited an incident from July 2022 where, following the malfunction of the employer's computer server, the owner implied or stated to other employees that claimant bore some responsibility either for the malfunction itself or for delays in it being repaired. Claimant contended that the owner's characterization of claimant's involvement included an allegation that claimant "sabotaged" the server, and when claimant confronted the owner about this, the owner denied making such statements, causing claimant "frustration" and feelings that she had been falsely accused. Transcript at 6-7. In contrast, the owner characterized the comments or implications as only expressing a belief that claimant was unintentionally withholding information about the server that could be helpful in repairing it. Transcript at 21. The owner further testified that when claimant confronted her over "not giving [the owner] information," the owner admitted making the statements about withholding information, and after discussing the matter claimant admitted to unintentionally withholding information about the server due to a misunderstanding. Transcript at 21-22. Even if claimant's account of these events were accepted as true, it does not establish that claimant faced a grave situation. The record does not suggest that the owner continued to make comments which claimant found disparaging following repair of the server in July 2022. As the employer gave claimant a raise and increased authority in her position the following month and claimant continued to work for the employer through October 2022, the record suggests that the parties largely resolved this animosity over the server's malfunction and repair, and the owner's comments regarding the incident, by the end of July 2022. Accordingly, claimant has not demonstrated that this constituted a grave situation in September 2022 when she submitted her resignation.

Finally, claimant alleged that due to the stressful work environment, she was "sort of losing [her] hair." Transcript at 13. The record does not show whether claimant sought medical treatment for this condition, or whether attributing the hair loss to workplace stress was claimant's speculation or the conclusion of a medical professional. On this evidence, it is no more likely that workplace stress caused or worsened claimant's hair loss than other stressors unrelated to work, or unrelated medical conditions. Claimant has thus failed to establish by a preponderance of evidence that the hair loss constituted a grave situation. Further, the record fails to show that claimant had no reasonable alternatives to quitting in this regard, such as seeking medical treatment or medically-warranted workplace accommodations.

In sum, while claimant and some of her long-time coworkers may have disagreed with the changes that occurred as the result of new ownership of the business, personally disliked the owner or her husband, or felt stressed by workload, work processes, customer complaints, and technological failings, none of the reasons for quitting advanced by claimant, singularly or in combination, would have caused a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work when claimant did. Due to her dissatisfaction with the employer's new ownership, claimant sought other employment through the summer of 2022, and ultimately decided to pursue self-employment in August 2022, as she implied in her testimony that she registered her new business with the Secretary of State and inquired into the Department's self-employment assistance program at that time. Transcript at 17.

Nonetheless, claimant continued working through October 17, 2022, suggesting that the points of dissatisfaction that prompted her to seek other employment for months after they occurred or began occurring did not constitute reasons of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time. Accordingly, claimant has not shown good cause for quitting work.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective October 16, 2022.

DECISION: Order No. 23-UI-224829 is affirmed.

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

DATE of Service: July 13, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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