

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0715

Reversed & Remanded

PROCEDURAL HISTORY: On May 5, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective April 9, 2023 (decision # 111524). Claimant filed a timely request for hearing. On June 23, 2023, ALJ McGorrin conducted a hearing and issued Order No. 23-UI-228523, affirming decision # 111524. On June 27, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Travel Centers of America employed claimant at their truck stop, from July 21, 2022 until April 13, 2023, most recently as a service advisor.

(2) Claimant initially worked in the bar and restaurant portion of the truck stop. In January 2023, the employer hired her as a service advisor in the repair and maintenance shop portion of the truck stop. The employer hired claimant at a rate of pay of \$16 per hour.

(3) At some point after January 2023, the employer hired an individual to also work as a service advisor in the shop. This person had customer service experience and some knowledge of the trucking industry. The employer hired this person at a rate of pay of \$17 per hour. After the employer hired the new service advisor, claimant helped to train him. Claimant did not know that the new service advisor earned more than she did.

(4) During the time that claimant worked for the employer, she worked with a coworker who threatened physical harm to her, and after claimant complained to the employer, the coworker was suspended for three days but remained an employee of the employer. Claimant also believed that during her employment she had worked through her lunch periods at times, and that the employer would manually clock claimant's time sheet in and out for the lunch periods, and then not pay her for the time she had worked. Claimant also believed that the employer's truck stop "cut[] corners" and engaged in violations of Occupational Safety and Health Administration (OSHA) standards and other "dangerous stuff." Audio Record at 10:10.

(5) On April 13, 2023, claimant learned that the new service advisor earned more than she did. On that date, claimant spoke to her supervisor and mentioned the difference in pay along with “all the other things leading up to that date,” that is, the threatening coworker, the alleged unpaid time, and the alleged OSHA violations. Audio Record at 11:06. On the subject of the pay discrepancy between claimant and the new service advisor, the supervisor did not understand why the employer was paying the new service advisor more but stated that she could not do anything about it.

(6) Claimant reasoned that she should quit working for the employer based on “everything else that was already going on . . . that was, you know, unacceptable,” that is, the threatening coworker, the alleged unpaid time, and the alleged OSHA violations, coupled with getting paid “a dollar less than [her] coworker that [she] helped train.” Audio Record at 13:50 to 14:08. Claimant told her supervisor she was quitting, finished her shift, and never worked for the employer again.

(7) After she quit working for the employer on April 13, 2023, claimant contacted the employer’s human resources department about the pay discrepancy between herself and the new service advisor.

CONCLUSIONS AND REASONS: Order No. 23-UI-228523 is set aside, and this matter remanded for further proceedings consistent with this order.

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.

The order under review concluded that claimant failed to establish good cause to leave work because the fact that her coworker was paid a dollar more per hour was not a grave circumstance that left claimant no alternative but to quit her job. Order No. 23-UI-228523 at 2. The record supports this conclusion. The fact claimant earned one dollar per hour less than the person she trained was not a reason of such gravity that claimant had no reasonable alternative but to quit. Claimant may have regarded it as unfair or embarrassing that she would earn less than a person holding the same position that she helped train. However, for someone to have good cause to voluntarily leave work, they must derive some benefit from leaving work. *See Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014). It is not evident how quitting her job and reducing her income to zero benefited claimant when she could have continued to work at the \$16 per hour rate of pay.

However, remand is warranted because the order under review failed to analyze the other reasons for quitting that claimant referenced at hearing, finding that claimant would have remained working for the employer until she found another job despite these reasons. Order No. 23-UI-228523 at 1, ¶ 3. Implicit in this finding was that these other reasons were not causal factors in claimant’s decision to quit on April 13, 2023. However, the record as developed supports that these other reasons more likely than not were causal factors in claimant’s decision to quit. Remand therefore is necessary to develop the record

regarding these reasons in order to determine whether they constituted good cause for claimant's voluntary leaving.

At hearing, claimant testified that "it's a build up of things that led up to my quitting" and when pressed on the nature of the final incident on April 13, 2023, stated "I was informed, um, that a coworker who was hired after me, um, that I helped train, um, was making more money than I was." Audio Record at 8:42 to 9:06. Then, however, when asked what claimant told her supervisor the reason for her quitting her job was, claimant testified:

I told her that between, um, one of the other coworkers threatening to um, you know, cause physical harm to me, and still working for the company. Um, and then all of the OSHA violations, the dangerous stuff going on there cutting corners. And then, um, my manager . . . manually clocking me out for lunches that I wasn't receiving but not getting paid for them. Um, that was the straw that broke the camel's back, I was like, "I can't do it anymore[.]"

Audio Record at 9:51 to 10:22. The ALJ then asked, leadingly, "so the straw that broke the camel's back was the fact that the coworker was being paid more than you?", to which claimant answered affirmatively. Audio Record at 10:23 to 10:33. The ALJ asked whether the April 13, 2023 discussion with the supervisor was the only conversation claimant had about the pay discrepancy, to which claimant answered "the pay discrepancy and then all the other things leading up to that date, but yes." Audio Record at 10:53 to 11:05. A few moments later, when asked about the employer's human resources office, claimant again referenced the other reasons for quitting, stating "I contacted [the human resources office] about all of this stuff going before—" Audio Record at 12:34. The ALJ then interrupted the witness and following exchange occurred:

Q: Well, right now we're focusing on what you did before you quit. So, if it wasn't for the pay discrepancy and the new coworker was paid the same amount as you, would you have continued to work there?

A: Um, probably no. Um, no.

Q: Well you say probably no. You've indicated that that was the straw that broke the camel's back. So, if for example [the supervisor] had said okay, we'll remedy this, we'll make sure you and the new coworker are paid the same amount, would you have continued to work there?

A: I would have stayed until I found another job. But no I was not planning on staying with that, the company, no.

Q: Okay, but you would have continued working there until you found another job is that right?

A: Correct.

Q: So it was the pay discrepancy that motivated you to quit the job?

A: Oh yeah, that was the end, the end of it, yeah. That was the end. End all.

Q: Okay.

A: Everything else that was already going on there, that was, you know, unacceptable and [the truck stop manager] should have done something about it, period, um, was bad enough and then it was like, really, now you're going to pay me a dollar less than my coworker that I helped train. It just was like, was like—

Q: Okay, but I understand from what you've already told me that despite the other issues, if it wasn't for the pay discrepancy you would have continued working there until you were able to find yourself another job, did I get that right?

A: Correct.

Audio Record at 12:40 to 14:21.

Based on the foregoing, the weight of the evidence supports that the threatening coworker, the alleged unpaid time, and the alleged OSHA violations were causal factors in claimant's decision to quit on April 13, 2023. Accordingly, on remand, the ALJ should ask questions about each of these issues sufficient to determine whether any of them were reasons of such gravity that claimant had no reasonable alternative but to quit work when she did.

Additionally, shortly after the ALJ convened the hearing, but before the ALJ took testimony, claimant advised that she had a witness prepared to call in to testify on her behalf. Audio Record at 00:15. The ALJ told claimant to let the witness know to "standby and we'll let her know if we need her to testify." Audio Record at 00:50. A few moments later, claimant advised that she messaged the witness and "would let her know if we need her to testify." Audio Record at 2:47. However, the ALJ adjourned the hearing after examination of claimant and the employer's witness, and never revisited whether to take testimony from the individual claimant had arranged to call as a witness. On remand, claimant may again offer to call the individual as a witness. Although the ALJ is free to decline to take testimony from the witness if doing so would elicit irrelevant, immaterial, or unduly repetitious evidence, the ALJ should explicitly address whether to take testimony from the witness. If the ALJ declines to do so, the ALJ should explain why the witness's testimony is not being taken.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit work with good cause, Order No. 23-UI-228523 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-228523 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Serres and D. Hettle;

A. Steger-Bentz, not participating.

DATE of Service: August 4, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-228523 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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