

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0772

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2023, 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 April 9, 2023 (decision # 120138). Claimant filed a timely request for hearing. On June 22, 2023, ALJ Amesbury conducted a hearing, and on June 27, 2023 issued Order No. 23-UI-228719, affirming decision # 120138. On July 11, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Confederated Tribes of Siletz Indians employed claimant, most recently as an accounting supervisor, from October 17, 2001 until April 14, 2023.

(2) On September 14, 2022, the employer's general manager discharged their controller, S.C., who was claimant's longtime supervisor. The following day, the general manager held a meeting with the accounting department. He revealed some details about S.C.'s discharge, and stated that another member of leadership was under investigation. He directed that this person not be contacted by staff until the investigation was concluded. He further told the department staff that based on the results of a survey, there was apparently internal and external dissatisfaction with the performance and work environment of the accounting department, that the department therefore would be under additional scrutiny by an independent third party, and that "more changes would likely come to the department." Exhibit 1 at 7. Despite being discharged, S.C. was reinstated to her position as controller later that year for a period of time.

(3) On September 17, 2022, in response to the September 15, 2022 meeting, claimant submitted a grievance against the general manager, which some of claimant's staff joined. Claimant asserted that the general manager's presentation to the accounting department violated the employer's policies against "intimidation, oppression, and exploitation;" bullying and harassment;" and engaging in "malicious gossip." Exhibit 1 at 6. Based on claimant's grievance, the employer placed the general manager on leave and hired an independent law firm to investigate claimant's complaints.

(4) On November 23, 2022, the employer notified claimant that the investigation into her complaint had concluded, and the employer reviewed and agreed with the investigator's findings that none of claimant's complaints could be substantiated. As a result, the general manager was permitted to resume his duties on November 28, 2022.

(5) In January 2023, claimant and other employees from the accounting department, including S.C., participated in interviewing job candidates along with an employee from human resources. Claimant became involved in a disagreement with the human resources employee during this process. That employee filed a grievance against claimant and S.C. An independent employee from an outside department was appointed to investigate the complaint, which included interviewing claimant. Claimant believed she had not done anything improper.

(6) In February 2023, the investigator interviewed claimant. Prior to asking questions directly about the incident that gave rise to the complaint, the investigator asked preliminary questions of claimant, such as what her qualifications were for her position, and whether she had ever "been asked to do things that were unethical or illegal." Transcript at 9. Claimant believed these questions to be "unnecessary and accusatory." Transcript at 9.

(7) On February 1, 2023, the employer's human resources director emailed claimant to relay a concern from a human resources employee that the employee's tax withholdings from her paychecks were incorrect, and asked for help fixing the problem. The email did not mention claimant specifically or accuse anyone of being responsible for the error, but simply apprised claimant of the situation in the hopes she could resolve it as part of her work duties. Claimant believed this to be "unprofessional communications" from the human resources director that constituted evidence of "hostile and intimidation tactics" and "possible retaliation" for the January 2023 interview incident. Exhibit 1 at 24.

(8) On March 5, 2023, the investigator completed a report on the January 2023 complaint concluding that claimant and/or S.C. violated the employer's policies prohibiting intimidation and "significantly and unreasonably impair[ing] another person's personal or professional morale." Exhibit 1 at 16. The report also stated that in the course of investigating the complaint, additional violations of policy were found involving: "Altering without authority, or falsifying any Tribal record or report;" "Deliberately falsifying Tribal records or deceiving Tribal Supervisors about job-related activities;" and "Falsification or intentional misrepresentation of a material nature on an Employee's application for employment." Exhibit 1 at 17. The report did not state which violations, if any, were committed by claimant, rather than S.C., nor whether claimant was subject to disciplinary measures as a result of the report's findings. The investigator distributed the report to the employees involved in the complaint, those employees' supervisors, and the general manager. The employees' and supervisors' copies of the report did not include any of the facts or findings on which its conclusions were based.

(9) On March 9, 2023, claimant filed an appeal of the March 5, 2023 report with the employer. Claimant believed that the report's conclusions were "defamatory and libelous statements" against her. Transcript at 11. That day, she also filed another grievance against the general manager, alleging that the March 5, 2023 report, "libel[ed]" her and violated confidentiality because it was distributed by the investigator to others involved in the complaint and their supervisors, and that the investigation was ordered in retaliation for claimant filing the September 17, 2022 grievance against the general manager. Exhibit 1 at 13. The general manager was not the author of the report, however. On April 6, 2023, the employer

notified claimant that it had appointed an independent law firm to investigate this grievance. Both the appeal and the grievance filed by claimant on March 9, 2023 were still pending at the time claimant separated from employment.

(10) Prior to March 2023, claimant had been receiving treatment and taking medication from a mental health provider “for years.” Transcript at 16-17. In March 2023, claimant believed her “mental and physical health were suffering as a result of the stress at work[.]” Transcript at 17. Claimant was eligible to request leave from work under provisions essentially the same as the Family and Medical Leave Act (FMLA), but did not request any leave.

(11) On approximately March 20, 2023, a Tribal Court ruled that the reinstatement of S.C. to her position after she had been discharged in September 2022 was improper, and it re-imposed her discharge from employment with immediate effect. Upon learning of this, claimant submitted her resignation to the employer, to take effect April 14, 2023. In her resignation letter, claimant stated that her reasons for quitting work included S.C.’s discharge, being “constantly under scrutiny and attack from Human Resources and some in Administration,” the investigation and conclusions of the March 5, 2023 report regarding the January 2023 complaint against claimant, and that her “mental and physical health [were] beginning to suffer as a result of work-related stress and anxiety.” Exhibit 1 at 30.

(12) Later on March 20, 2023, the employer sent an email to all employees, which read in its entirety, “You will be noticing a personnel change in the Accounting Department. [S.C.] is no longer the Controller based upon the Siletz Tribal Court’s decision in [Case No. 22-05]. Her last day of work was Friday, March 17, 2023. Please be patient and understanding with the Accounting Department staff during this transition.” Exhibit 1 at 28. Claimant believed this email to be “unprofessional” and evidence of a “hostile work environment.” Exhibit 1 at 28.

(13) On April 14, 2023, claimant quit working for the employer as anticipated.

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 with a permanent or long-term “physical or mental impairment,” as defined at 29 CFR §1630.2(h), 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 quit working for the employer, in part, because she had concerns regarding the effect of the work environment on her health. Claimant testified she was not given any diagnosis despite receiving treatment from a mental health provider and taking medication “for years.” Transcript at 16-17. Therefore, she may have suffered from a permanent or long-term “mental impairment,” as defined at 29

CFR §1630.2(h). Claimant did not describe the specific effects the work environment had on her condition, but stated in her March 20, 2023 resignation letter that her “mental and physical health [were] beginning to suffer as a result of work-related stress and anxiety.” Exhibit 1 at 30. Claimant’s complaints about the work environment appear to have begun in September 2022. The record does not suggest that claimant found her symptoms growing in severity such that she needed to seek additional or more aggressive treatment for her condition, or that she was advised to alter her work activities by her health care provider. Further, while claimant was entitled to request extended leave from the employer for mental or physical health reasons, claimant did not make such a request, suggesting that her condition had not worsened to the point of requiring a leave of absence. Accordingly, claimant has not shown that any effect of the work environment on her health condition constituted a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would have quit work.

Claimant also quit work because she disagreed with the employer’s decision to discharge S.C., which seemingly initiated claimant’s dissatisfaction with the employment in September 2022. Additionally, S.C.’s March 20, 2023 removal after having been reinstated to her position was, in combination with other pre-existing reasons, what prompted claimant to submit her resignation later that morning. While claimant may have been unhappy with the additional scrutiny these personnel actions involving S.C. brought on the accounting department, claimant has not demonstrated that the scrutiny was unwarranted or unreasonable. She also did not demonstrate that this scrutiny resulted in, or likely had the potential to result in, any adverse personnel action against claimant personally over the six months that followed. Claimant seemingly viewed every decision or communication by the employer or other employees with which she disagreed during this period to be evidence of personal hostility toward her, from the general manager’s announcement about potential changes and new oversight at the accounting department, to the employer’s dismissal of claimant’s grievance as unfounded against the general manager for simply making that announcement, to even routine business communications like the February 1, 2023 email about a payroll question or the March 20, 2023 email announcing S.C.’s departure. To the extent claimant quit work because she found these actions and communications to constitute a hostile work environment, she did not face a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would have quit work for that reason.

Further, claimant also quit over her displeasure with the handling of a complaint made against her by another employee in January 2023. The record does not reveal details of the incident leading to the complaint, or the factual allegations made in the complaint. Claimant found some of the foundational questions asked of her during the investigation of the complaint to be accusatory, but the examples she gave of being asked what her job qualifications were, or if she had ever been asked to do things that were unethical or illegal, were not objectively accusatory. Given that S.C., the employer’s controller and claimant’s supervisor, was being jointly investigated with claimant, these questions were logical and did not assert or imply wrongdoing by claimant. However, the investigation’s findings that either claimant or S.C. violated the employer’s policies as alleged in the complaint, and committed additional violations discovered during the investigation, understandably resulted in claimant feeling anger and confusion. The report announcing these findings did not distinguish between whether it held claimant or S.C. responsible for each violation, nor did it provide a factual basis for any of the findings. While claimant had apparently been provided with a copy of the complaint at some point and was generally aware of the incident leading the other employee to make the complaint, claimant was not provided with any

information about what led to the finding of presumably more serious and unrelated violations involving falsification of records and making misrepresentations in official documents. Claimant denied any wrongdoing and expressed concern about the effects of this report on her “future employment” prospects to the employer. Exhibit 1 at 20.

A claimant has good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects. *McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010). The record does not demonstrate that claimant committed misconduct in connection with any of the policy violations asserted in the March 5, 2023 report. However, it also does not demonstrate that claimant was at risk of being discharged because of the report. The report itself does not contain any mention of disciplining claimant, and neither party offered evidence suggesting that the employer was contemplating disciplining claimant over the alleged violations found in the report. Claimant appealed the report’s findings on March 9, 2023, and that appeal had not been decided when claimant separated from employment. Therefore, any potential discipline that claimant faced was not imminent or inevitable at the time she quit. Because the report’s findings were not yet final, and there was insufficient evidence of immediate or inevitable consequence to claimant stemming from the report, claimant has not shown that she faced a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would have quit work for this reason.

Further, even if claimant had faced a grave situation, she did not demonstrate that there were no reasonable alternatives to quitting work. At the time of her resignation and at the time she stopped working for the employer, her appeal of the March 5, 2023 report and her March 9, 2023 grievance against the general manager were still pending. Waiting for the results of this appeal and grievance may have resolved many of the causes of claimant’s displeasure with the work environment if ultimately decided in claimant’s favor, and was therefore a reasonable alternative to quitting when she did. To the extent the work environment may have been beginning to affect claimant’s health, it would have been reasonable for claimant to have sought additional treatment from her provider, or accommodations including extended leave from the employer, instead of quitting work. Claimant did not avail herself of these reasonable alternatives. Accordingly, claimant has not shown good cause for leaving work.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 9, 2023.

DECISION: Order No. 23-UI-228719 is affirmed.

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

DATE of Service: August 24, 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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.