

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0796

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 19, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 30, 2023 (decision # 143723). Claimant filed a timely request for hearing. On June 30, 2023, ALJ Logan conducted a hearing, and on July 5, 2023 issued Order No. 23-UI-229578 affirming decision # 143723. On July 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on July 17 and July 18, 2023. Claimant's July 17, 2023 argument was a question and answer statement apparently attributed to an assistant manager, which is not notarized, and is offered to substantiate aspects of claimant's testimony in this matter. The record fails to show any reason why claimant could not have offered the assistant manager as a witness at hearing. As such, the July 17, 2023 argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Claimant also did not declare that he provided a copy of his July 17, 2023 argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB did not consider claimant's July 17, 2023 argument in reaching this decision. Claimant's July 18, 2023 written argument was primarily in the nature of argument, but contained some information extraneous to the record. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's July 18, 2023 argument to the extent it was based on the record.

EVIDENTIARY MATTER: After the hearing concluded on June 30, 2023, claimant forwarded an email to the Office of Administrative Hearings (OAH) for consideration by the ALJ. ALJ Logan reopened the record and admitted the email into evidence but did not mark it. Order No. 23-UI-229578 at 1. As a clerical matter, EAB is marking the email as Exhibit 1.

FINDINGS OF FACT: (1) AT&T Mobility Services LLC employed claimant, most recently as a retail store manager, from October 2018 until May 3, 2023.

(2) In May 2021, the employer assigned a new area manager, K.M., to the area in which claimant's store was located. Thereafter, claimant reported directly to K.M.

(3) During the two-year period claimant reported to K.M., claimant believed that K.M. subjected him to threats of violence, insulted his appearance, and mocked claimant's request for a religious accommodation. Claimant believed that he raised K.M.'s conduct to K.M. directly and with the employer's human resources department, but that K.M.'s behavior did not change.

(4) Over the period claimant reported to K.M., claimant's mental health declined. Claimant's loved ones became concerned about his mental health and at their urging, claimant decided to quit working for the employer.

(5) On or about April 19, 2023, claimant gave the employer notice of his intent to voluntarily quit effective May 3, 2023. Claimant did not mention K.M. in his resignation notice and stated instead that he was quitting to pursue other employment options. On May 3, 2023, claimant quit working for the employer, as planned.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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.

Claimant voluntarily quit working for the employer because he believed that K.M. subjected him to threats of violence, insulted his appearance, and mocked claimant's request for a religious accommodation. At hearing, K.M. testified and presented an account that differed substantially from claimant's account, disputing each of claimant's allegations of mistreatment. Because K.M.'s testimony disputed claimant's account, claimant failed to meet his burden to show that he quit work for a reason of such gravity that he had no reasonable alternative but to leave work when he did.

Specifically, claimant testified that on a weekly basis, during teleconferences with other store managers present, K.M. threatened to punch claimant in the throat and gut and, on one occasion, threatened to castrate claimant. Audio Record at 7:55 to 8:57. Claimant testified that in these same meetings, K.M. criticized claimant's appearance by stating that claimant looked "homeless", "gay", or "stupid." Audio Record at 9:23 to 9:56. In contrast, K.M. testified that "every ounce" of claimant's allegations were "completely untruthful." Audio Record at 18:29. K.M. stated that he "absolutely [did] not" threaten to punch or castrate claimant. Audio Record at 19:59. K.M. denied mocking claimant's appearance, stating

instead that he believed that near the end of claimant's tenure with the employer claimant had "given up" on the job and would appear at meetings looking tired and disengaged, which caused K.M. to raise claimant's appearance because it reflected on claimant's store. Audio Record at 20:20. Based on the foregoing, because the evidence is no more than equally balanced on these subjects, claimant failed to meet his burden to prove that K.M. subjected him to threats of violence or insulted claimant based on claimant's appearance.

Claimant also believed that K.M. referred to individuals who seek accommodations for their religious beliefs as "retarded" and undeserving of accommodations. Audio Record at 26:39. Claimant testified that in November 2022, K.M. had a teleconference with claimant and other store managers in which K.M. allegedly expressed these views. Audio Record at 27:47. Claimant testified that a few days later, K.M. had a closed door meeting with claimant, mentioned a religious accommodation request claimant had made, and allegedly called the request "bullshit." Audio Record at 28:01. However, in contrast, K.M. testified that he "never had a religious conversation with [claimant]," that he was not aware of any accommodation request made by claimant, and that such requests are evaluated by "a separate division outside leadership." Audio Record at 28:53. At most, the foregoing shows that the evidence is no more than equally balanced as to whether K.M. subjected claimant to any mistreatment relating to claimant's request for a religious accommodation.¹ As such, claimant did not meet his burden to prove that he suffered mistreatment from K.M. on that basis.

Finally, the evidence is similarly in conflict regarding whether claimant pursued reasonable alternatives prior to voluntarily leaving work. Claimant testified that he raised K.M.'s conduct to K.M. directly and with the employer's human resources department on numerous occasions, all to no avail. Audio Record at 10:49, 16:55. However, K.M. denied ever being contacted by claimant or the employer's human resources department about complaints made by claimant. Audio Record at 24:02. Given the state of the evidentiary record, claimant failed to establish by a preponderance of the evidence that he pursued reasonable alternatives to quitting before he voluntarily left work.

For these reasons, claimant failed to carry his burden to show that he quit working for the employer for a reason of such gravity that he had no reasonable alternative but to leave work. Accordingly, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective April 30, 2023.

DECISION: Order No. 23-UI-229578 is affirmed.

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

DATE of Service: August 29, 2023

¹ Note that after the June 30, 2023 hearing in this matter, claimant forwarded an email to OAH for consideration by the ALJ, which the ALJ admitted into evidence and EAB has marked as Exhibit 1. The email dates from October 2021 and appears to show that K.M. was copied on an email request by claimant for an exemption from receiving the COVID-19 vaccine. Exhibit 1 at 2. As such, Exhibit 1 suggests that K.M. may have been privy to claimant's vaccine exemption request from 2021. However, the evidence does not appear to have any bearing as to whether K.M. was aware of claimant's religious accommodation request dating from November 2022. As such, notwithstanding Exhibit 1, the evidence remains at best equally balanced on this point.

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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