

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0861

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 73519). The employer filed a timely request for hearing. On July 12, 2023, ALJ Frank conducted a hearing, and on July 20, 2023 issued Order No. 23-UI-230997, reversing decision # 73519 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective March 12, 2023. On August 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Murphy Company employed claimant in production work from November 2021 until March 16, 2023.

(2) Throughout her employment, claimant had ongoing conflict with a supervisor who was not claimant's direct supervisor, believing that this supervisor was "harass[ing]" and "bullying" her. Exhibit 2 at 2.

(3) On March 16, 2023, the supervisor came to claimant's workstation, stood next to claimant, and "began criticizing [claimant's] work unnecessarily." Exhibit 2 at 2. The supervisor persisted despite claimant asking her to stop, eventually "shaking her finger in front of [claimant's] nose" while "cussing [at claimant] so hard she was spitting in [claimant's] face." Exhibit 2 at 2. In response, claimant "pushed her finger away from [claimant's] face," causing the supervisor to yell for help, which drew their manager to intervene. Exhibit 2 at 2.

(4) After giving claimant approximately 30 minutes to "cool off," claimant's manager discussed the matter with claimant, though she was still "upset" and "emotional." Transcript at 8, 22. The manager intended to fully investigate the incident before deciding whether to impose discipline on anyone

involved. Claimant believed the manager told her that she “had to sign a document saying that she [claimant] was responsible for the incident[.]” Exhibit 2 at 2. Claimant told the manager that she refused to participate in any disciplinary process unless the other party to the incident was also disciplined. When the manager did not express agreement with this, claimant stated, “I’m done,” and that she would find employment elsewhere. Transcript at 7, 21. The manager replied, “If you are done, then you’re done now.” Transcript at 21. Claimant believed she had been discharged and therefore gathered her things and left the worksite. She did not report to work again or inquire as to her employment status thereafter.

(5) At some time between March 17, 2023 and March 21, 2023, the manager texted claimant that her final paycheck was ready and that she needed to return her timecard and keys. Claimant picked up the check and returned these items without further discussion.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Nature of the work separation. If the 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) (September 22, 2020). 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).

The parties disputed the nature of the work separation. Both parties agreed that, during the final interaction with her manager, claimant stated, “I’m done.” Transcript at 7, 21. The manager testified that claimant then said, “I’ll get a job elsewhere.” Transcript at 21. Claimant testified that she could not recall whether she said that. Transcript at 8. The manager’s specific recollection of claimant making the statement is entitled to greater weight than claimant’s lack of recollection as to whether she said it. Therefore, more likely than not, claimant stated, “I’m done. I’ll get a job elsewhere,” then turned to leave the conversation. Claimant testified that she did not intend to quit her job by making this statement, but that she meant she “was done taking her crap, that I wasn’t gonna have her abuse me any longer [referring to the supervisor involved in the incident].” Transcript at 7. The manager, however, understood the statement to mean that claimant was quitting her job. The manager therefore replied to claimant, “If you are done, then you’re done now.” Transcript at 21. Claimant testified that she understood this statement to mean she was being directed to “get [her] stuff and leave” because she was being discharged. Transcript at 9. Claimant then gathered her belongings and left.

Claimant’s statement to her manager that she was “done” and would find work elsewhere objectively conveyed an intent to quit work. The manager’s statement in response to claimant was conditional: “*If* you are done, then you’re done now.” (Emphasis added.) It is therefore reasonable to infer that claimant, if she had not meant this statement as a resignation, would have expressed some indication that she wished to remain employed. Instead, claimant removed her belongings from the workplace and left without attempting to retain her job, and did not attempt to return to work thereafter. It can reasonably be inferred from these actions that claimant intended her statement to be a resignation. However, it is unclear from the statement itself whether claimant intended to quit with immediate effect or at some future time, perhaps after finding other employment.

The manager's response objectively conveyed that if claimant was resigning that she would not be permitted to have that resignation take effect at a later time and date, and she would therefore not be permitted to continue working for the employer any additional period of time if her intention was to resign. If claimant had intended her resignation to become effective at some time in the future, the manager's statement would have constituted a discharge, as the employer would have been denying claimant the ability to continue working for an additional period of time despite her desire to do so. However, since claimant did not specify a future time or date when the resignation would become effective, and left the workplace without responding to the manager's statement, it can be inferred that either claimant intended for the resignation to have immediate effect when she gave it, or claimant intended for it to take effect later but then agreed that it would have immediate effect by not voicing disagreement with the manager's statement that it would be considered to have immediate effect. *See J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (where claimant notified the employer of his intent to resign on a particular date, and the employer established a different separation date, claimant's "agreement" to the new separation date can be inferred if claimant did not voice disagreement with the new date or otherwise insist upon working until the original resignation date). Therefore, because the record shows that the parties were in agreement that the resignation would take immediate effect, even if only by claimant's failure to voice disagreement, the separation is properly characterized as a voluntary leaving that occurred March 16, 2023.

Voluntary quit. 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.

As discussed above, while claimant asserted that she was discharged, the record supports the conclusion that she voluntarily quit work. As such, claimant did not explicitly assert a reason for quitting at hearing. However, based on the events immediately preceding her statement to the manager that she was "done," as recounted by claimant, it can reasonably be inferred that claimant quit work because she was upset by the prospect of being disciplined for the incident involving the supervisor without the supervisor also being disciplined.

Conflicting evidence was offered regarding the imposition of discipline in response to the incident. In a letter claimant sent to the employer's human resources department following the incident, claimant stated that her manager "told me I had to sign a document saying I am responsible for the incident and when I didn't I was told to get my things and go." Exhibit 2 at 2. At hearing, claimant similarly testified that she was no longer working for the employer "[b]ecause [the manager] asked me to get my things and leave because I wouldn't sign the statement[.]" Transcript at 5. However, claimant then admitted she had not been presented with any document to sign. Transcript at 6. She later clarified that, "He didn't present me with a document, but the document was gonna come." Transcript at 17. The manager testified that he did not request that claimant sign anything and "there was no talk of any disciplinary actions." Transcript at 18. He further testified that if any discipline were to be imposed on any party, it

would only be done “following the investigation.” Transcript at 19. The record therefore shows that, more likely than not, claimant assumed that she would be disciplined for the incident, but such discipline had not yet actually been imposed at the time that claimant quit. Claimant reacted to the conversation by immediately quitting work, and her accounts of the portion of the conversation regarding whether the supervisor would be disciplined were largely consistent. It is therefore more likely than not that the parties did discuss discipline in some form during this conversation and that the manager refused to commit to disciplining the supervisor as claimant demanded, causing claimant to quit.

The supervisor’s actions during the incident, as described by claimant, may have eventually constituted a grave situation if left unaddressed by the employer, particularly if claimant were unjustly disciplined as a result of the supervisor’s actions, or the supervisor’s conduct was permitted by the employer to be repeated in the future. However, because claimant quit within 30 minutes of the incident, without giving the employer a chance to investigate or make final decisions regarding discipline, these potentially grave scenarios had not come to pass.

A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have left work for this reason prior to a final determination by the employer as to which employee would be disciplined and what form the discipline would take, as well as allowing the employer an opportunity to take steps to prevent further mistreatment by the supervisor. Accordingly, claimant has not shown that she faced a situation of such gravity at the time she quit that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Moreover, even if claimant’s circumstances were grave, she had the reasonable alternative of allowing the employer to complete their investigation and render a final decision on discipline before deciding that the discipline was unjust or did not fairly address her complaints against the supervisor. Because claimant did not quit for a reason of such gravity that she had no reasonable alternative but to quit, she quit work without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 12, 2023.¹

DECISION: Order No. 23-UI-230997 is affirmed.

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

DATE of Service: September 21, 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.

¹ Claimant asserted in her written argument that she was “appealing. . . the March 12 effective date” of the disqualification. Claimant’s Written Argument at 1. A disqualification from benefits based on a work separation must begin on Sunday of the week in which the separation occurred. *See* ORS 657.167; OAR 471-030-0005 (January 11, 2018).

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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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