

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0932

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 30, 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 May 14, 2023 (decision # 93006). Claimant filed a timely request for hearing. On August 1, 2023, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on August 8, 2023, issued Order No. 23-UI-232658, affirming decision # 93006. On August 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Justworks Employment Group LLC, employed claimant as an office manager from August 2021 until May 17, 2023. The employer operated a pediatric clinic managed by a partnership of two doctors, S.H. and M.H.

(2) Claimant was frightened of M.H. at times, thought M.H. created a tense workplace, and tried to avoid being alone with M.H. at work. Claimant believed that M.H. was prone to outbursts and believed at such times, M.H.'s appearance would change, and, to claimant, he would "look[] like an evil person." Transcript at 23. Claimant had heard M.H. slam his office door, and had heard him slam files down on his desk. However, M.H. never threatened or physically harmed claimant, nor had claimant ever seen M.H. threaten or harm anyone else.

(3) In July 2022, at the end of a workday, M.H. approached claimant and expressed disapproval of how claimant organized the schedule of the clinic's other doctor, S.H. Claimant asked to have the discussion

while S.H. was present. M.H. insisted on discussing the matter then and moved forward to the front of claimant's desk, about three or four feet away from claimant, with the desk between them. Claimant told M.H. he was making her uncomfortable and that she was going to leave. Claimant got up to leave and "once [claimant] got a safe distance away" M.H. initially began to follow her stating that he was not finished with the conversation. Transcript at 18. Claimant then said, "I need you to leave me alone and not come any closer." Transcript at 18. M.H. then stopped following claimant and claimant finished leaving the clinic and went home. The July 2022 interaction between claimant and M.H. made claimant feel like she was having a panic attack, and like M.H. was going to grab her car keys. However, M.H. did not grab claimant's keys and, over the course of claimant's employment, M.H. never threatened or physically harmed claimant. The July 2022 interaction also bothered claimant because she believed office policies should be changed by the doctors jointly. Later, M.H. told claimant he would wait and talk to S.H. about the issue of how claimant organized S.H.'s schedule. Claimant was never required to change how she organized S.H.'s schedule.

(4) One day in March 2023, M.H. asked claimant to meet with him privately in his office to discuss a change to claimant's job description that he was considering. Claimant complied, although she was frightened of being alone with M.H. and was worried that he might push her during the meeting. M.H. did not threaten or harm claimant during the meeting. When the meeting began, claimant asked if she could leave the office door cracked open. M.H. told claimant that the door should be closed completely. However, claimant then left the door open a crack, and M.H. allowed the door to remain that way. M.H. mentioned he was considering changing claimant's job to a role more like a medical assistant. Claimant wished for S.H. to be present for the discussion, but M.H. stated it was not necessary for S.H. to be there. The discussion then ended. Later, claimant brought the potential job description change back up with M.H., but M.H. stated that it was unnecessary to discuss any further because he was not going to change the job description.

(5) Throughout the spring of 2023, claimant felt that M.H. was gradually taking away some of her job tasks. Claimant had prepared billing invoices and sent out payments as part of her job but found that M.H. started taking over those duties. M.H. also started checking the mail and making bank deposits. M.H. hired three new staff members without input from claimant. Claimant began wondering whether she would lose her job and decided to quit because she "already d[id]n't feel comfortable working [t]here" and she "d[id]n't know what the future h[eld]." Transcript at 35.

(6) Also, during the spring of 2023, S.H. announced his intention to leave the clinic effective May 19, 2023. On May 3, 2023, claimant tendered to the employer written notice of her intent to resign effective May 17, 2023. Claimant selected May 17, 2023, as her last day to ensure that her resignation occurred before S.H. left the clinic because claimant did not want to work for M.H. exclusively.

(7) On May 16, 2023, M.H.'s wife was at the clinic while claimant was working. M.H.'s wife approached claimant and asked claimant for her office manager log-in credentials to insurance company and hospital websites. Claimant refused to provide them, and told M.H.'s wife that she believed giving out the log-in credentials was prohibited by privacy laws.

(8) On May 17, 2023, claimant's last day of work as indicated on her letter of resignation, claimant arrived at her desk and noticed that her telephone was gone. When claimant tried logging into her work email account, she received a message that the administrator had changed the password, that claimant

had to request a new password, and that the administrator was now M.H.'s wife. Claimant logged into the employer's electronic medical records program and found that her username and password still worked. Claimant's access to the medical records, but not to her email, enabled her to do some, but not all of her job tasks. Claimant approached M.H. and asked for an explanation, and M.H. stated that he removed claimant's telephone because she did not need it that day and that claimant needed to contact M.H.'s wife to get the email account password. Claimant asked why she had to call M.H.'s wife and M.H. responded that claimant just needed to call her, and she would explain. Claimant felt "like [she] shouldn't have to do that" because she did not regard M.H.'s wife as a clinic employee and complained that M.H. was keeping her from doing her job. Transcript at 41. M.H. repeated that claimant needed to contact his wife, and stated that claimant needed to also give to his wife claimant's log-in credentials to insurance company and hospital websites, which were stored in claimant's email account. Claimant stated she could not do that because she believed giving out her log-in credentials was prohibited. Claimant noticed that M.H. was "getting flustered" because claimant "kept asking him why" and would not accept his explanation "as to why he did what he did." Transcript at 42. M.H. then commented "you can't do your job correctly unless you're going to give [M.H.'s wife] your passwords." Transcript at 42. Claimant returned to her desk and worked on other job tasks she was still able to do for the rest of the morning, but did not contact M.H.'s wife.

(9) Later that day, just before noon, M.H. came to claimant's desk and asked why claimant still had not called his wife. Claimant responded that she did not have a phone at her desk to call M.H.'s wife. M.H. told claimant to use her cell phone. Claimant responded, "I'm not using my cell phone for a work call." Transcript at 43. At that point, claimant felt the interaction "was like a power struggle" between the two of them. Transcript at 51. M.H. started breathing heavily and getting angry. M.H. responded, in a raised voice, "if you're not going to do the job you need to do then don't bother coming back after lunch." Transcript at 43. Claimant responded, "I can't do my job. So I am not . . . going to be able to come back after lunch." Transcript at 43. M.H. stated he was not requiring claimant to leave and asked claimant to clarify if she was leaving work. Claimant then said "you are keeping me from being able to do my job the way I need to do it. . . . If I can't do that then I guess that's going to mean I have to leave right now." Transcript at 43. M.H. and claimant stared at each other for a moment. Claimant then left for lunch, did not return, and never worked for the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (September 22, 2020).

Claimant's work separation was a voluntary leaving that occurred on May 17, 2023. Claimant was scheduled to quit effective at the end of the day on May 17, 2023, pursuant to a resignation notice she gave the employer on May 3, 2023. At around noon that day, she and M.H. began arguing over whether claimant had contacted M.H.'s wife, as M.H. had instructed claimant to do, but which claimant had refused to do. M.H. stated, "if you're not going to do the job you need to do then don't bother coming back after lunch." Transcript at 43. Claimant responded with a comment that suggested she would not be

returning to work after her lunch break, and M.H. stated he was not requiring claimant to leave and asked claimant to clarify if she was leaving work. Claimant then said “you are keeping me from being able to do my job the way I need to do it. . . . If I can’t do that then I guess that’s going to mean I have to leave right now.” Transcript at 43. The two had a brief “stare off” and then claimant left for lunch, did not return, and never worked for the employer again. Transcript at 43.

Thus, claimant intended to sever the employment relationship at close of business on May 17, 2023, but did so instead at noon that day. As of noon that day, M.H. clarified he was not telling claimant to leave, but claimant announced her intention not to return from lunch, then left and never returned. Therefore, as of noon that day, claimant could have worked for the employer for an additional period of time but was unwilling to do so. Accordingly, claimant’s separation from work was a voluntary leaving that occurred on May 17, 2023.

Voluntary Leaving. 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.

Claimant voluntarily left work without good cause. To the extent that claimant quit at noon on May 17, 2023, because of her treatment by M.H. that day, claimant did not have good cause to quit when she did. Given that it was claimant’s last day of work, it was reasonable for M.H. to remove claimant’s phone and limit her email access that day. Although M.H. raised his voice at claimant in the course of arguing with her over whether she had contacted his wife, the raised volume came only after claimant refused to comply with M.H.’s command to contact his wife, and claimant repeatedly asked him why she had to do so. Although claimant did not regard M.H.’s wife as an employee, a reasonable and prudent person would not have refused to contact the wife on that basis. It was foreseeable that M.H. would involve his wife in clinic business, given that claimant and S.H. were both soon to depart. Furthermore, given that M.H.’s wife had been present in the clinic the day before and interacted with claimant regarding log-in credentials, claimant was on notice that M.H.’s wife had taken on a role with the employer so claimant’s failure to regard M.H.’s wife as a clinic employee was not reasonable. While claimant held the view that privacy laws prohibited her from giving out her passwords, no authority was presented at hearing to support that assertion. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have contacted M.H.’s wife rather than leave work on May 17, 2023, at noon.

To the extent that claimant quit on May 17, 2023, because she did not feel comfortable working there based on her interactions with M.H. in July 2022 and March 2023, claimant did not meet her burden to prove she quit work with good cause. Claimant was frightened of M.H. at times. At hearing, claimant testified that M.H. was prone to outbursts and at such times, M.H.’s appearance would change, and, to claimant, he would “look[] like an evil person.” Transcript at 23. However, the good cause standard is objective in nature and, viewed objectively, claimant’s interactions with M.H. in July 2022 and March 2023 were not of such gravity that claimant had no reasonable alternative but to leave work.

Although claimant sometimes heard M.H. slam his door and slam files down on his desk, M.H. never threatened or physically harmed claimant, and claimant had never seen M.H. threaten or harm anyone else. At no point did M.H. ever subject claimant to any name-calling or foul language. During the July 2022 interaction, M.H. came three or four feet away from claimant, with a desk between them. Also on that date, “once [claimant] got a safe distance away” M.H. initially followed claimant as she was leaving, but then he ceased doing so when claimant told him to stop. Transcript at 18. Claimant was concerned M.H. might grab her car keys during the July 2022 interaction, but M.H. did not do so. During the March 2023 interaction, claimant was worried that M.H. might push her during their meeting but M.H. did not do so, and when claimant left M.H.’s door open a crack, he allowed the door to remain that way. Based on the foregoing, claimant failed to establish that M.H.’s treatment of her was such that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

To the extent that claimant quit working for the employer because she did not like that M.H. made decisions without input from S.H. or clinic staff, claimant failed to establish good cause to quit. Claimant did not show that M.H.’s decision-making style ever placed her in a grave situation. Although in July 2022, M.H. expressed disapproval of how claimant organized S.H.’s schedule, M.H. later told claimant he would wait and talk to S.H. about the issue, and claimant was never required to change how she organized S.H.’s schedule. Although in March 2023, M.H. advised that he was considering changing claimant’s job description, the discussion ended without any change occurring. Later, claimant brought the potential job description change back up with M.H. and M.H. stated that it was unnecessary to discuss any further because he was not going to change the job description. Regardless, the employer is well within their rights to make changes to a job description or a work schedule without input from their employee.

Finally, to the extent that claimant quit working for the employer because she “d[id]n’t know what the future h[eld]” and thought she might eventually lose her job, claimant left work without good cause. Transcript at 35. The record shows that in the spring of 2023, M.H. took over some of claimant’s job duties like preparing billing invoices and sending out payments. M.H. also hired three new staff members at that time. While these facts may suggest the possibility of claimant eventually losing her job, the record fails to show that at the time claimant quit, the employer actually intended to discharge her or that any potential discharge was imminent or inevitable. Moreover, the fact that M.H. advised claimant in March 2023 that he was considering changing her job description but then later stated he was not going to change the job description suggests that claimant’s job was not in jeopardy. Thus, claimant failed to show that, at the time she quit, she faced a significant likelihood of being discharged. Accordingly, claimant failed to show that she had good cause to quit work to avoid a discharge.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective. May 14, 2023.

DECISION: Order No. 23-UI-232658 is affirmed.

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

DATE of Service: October 6, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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