

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1136

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 25, 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 June 18, 2023 (decision # 90219). Claimant filed a timely request for hearing. On September 26, 2023, ALJ Lewis conducted a hearing at which the employer failed to appear, and on September 28, 2023, issued Order No. 23-UI-237110, affirming decision # 90219. On October 10, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Northwest Quality Construction employed claimant as a concrete finisher from November 24, 2017, until June 23, 2023. Claimant regularly worked with the employer's owner, who was also claimant's supervisor, and two other employees.

(2) On June 5, 2023, claimant sought medical treatment at a hospital for a problem with his eye. The treating doctor gave claimant a note excusing him from work for two days. Claimant was absent from work that day and the following day for this reason.

(3) On June 7, 2023, claimant reported for work and attempted to submit the doctor's note to the owner. The owner "got extremely red faced and was screaming at [claimant] in [his] face." Audio Record at 25:30. The owner screamed that claimant "was fucking him over" and that, "[W]e're not gonna be able to make concrete because it's all [claimant's] fault" and he "didn't care if [claimant] had a fucking doctor's note." Audio Record at 26:00. Claimant felt "threatened" by the possibility of physical violence and believed the owner "was acting crazy." Audio Record at 27:04. Claimant believed this was part of a pattern of abusive behavior from the owner over the preceding year.

(4) On June 9, 2023, after awaiting but not receiving an apology from the owner for his actions on June 7, 2023, claimant texted the owner that he intended to quit working for the employer in two weeks due to the stress the owner was causing him. The owner did not respond, and "didn't speak to [claimant] for the next two weeks." Audio Record at 15:12. The owner also ignored claimant's questions about essential work matters such as "where we're working that day" and would only tell claimant's

coworkers “what it is [claimant and they] needed to get done,” then claimant would have to ask the coworkers later what he was supposed to be doing. Audio Record at 15:20. The owner also ignored questions about specific tasks as claimant was attempting to complete them.

(5) On June 23, 2023, two weeks after claimant gave notice of his intent to quit, the owner asked claimant, “Are you really going to quit?” Audio Record at 15:18. Because the owner had stopped talking to him following the June 7, 2023, incident, claimant replied that he was quitting that day. There was no further conversation between claimant and the owner and claimant did not work for the employer again after that day.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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 quit working for the employer because he had been stressed by the owner’s behavior, particularly on June 7, 2023, and because the owner thereafter refused to communicate with claimant until he quit on June 23, 2023. The order under review concluded that claimant did not face a grave situation in not receiving an apology from the owner for his actions on June 7, 2023. Order No. 23-UI-237110 at 3. The record does not support the conclusion that claimant quit only for that reason, nor does it support that claimant did not face a grave situation.

The owner’s stated refusal to accept claimant’s doctor’s note excusing his absence for the previous two days, while using foul language and what claimant felt was intimidating physical behavior, was understandably stressful to claimant. However, the record does not show that the owner disciplined claimant or threatened him with discipline for his absences. Despite the stress claimant experienced while being screamed at, the record suggests that he continued working the rest of that day and the following day without further incident. On June 9, 2023, because claimant did not receive an apology for the June 7, 2023, incident, claimant gave notice of his intent to quit in two weeks.

The relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017). Claimant’s reason for giving notice may not necessarily have amounted to a grave situation if, as the record suggests, claimant was willing to continue working for the employer if the owner had apologized by June 9, 2023. Such a willingness signified that the lack of an apology, rather than claimant’s stress from the screaming incident, was the proximate cause of his decision to give notice. However, claimant did not leave work until June 23, 2023, and his reason for leaving work that day was not merely the lack of an apology, but also the

owner's behavior during the notice period. The owner's behavior during the notice period is therefore subject to analysis.

Following the June 7, 2023, incident, the owner refused to speak to claimant. Even when claimant asked questions needed to do his work, such as where to report for work that day, what tasks he was expected to perform, or how to perform a task, he was ignored by the owner and excluded from discussion of these issues between the owner and claimant's coworkers. After more than two weeks of completely ignoring claimant, the owner's only communication to claimant was asking, on June 23, 2023, if he was really quitting. While posing this question may have implied that the owner wanted claimant to remain in his employ, the owner made no efforts to explain his conduct, persuade claimant not to quit, or even suggest that this silent treatment would not continue if claimant chose to stay. For that reason, and because of his upset at the way the owner treated him June 7, 2023, claimant quit working for the employer on June 23, 2023, as planned. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded by that date that due to the intentional lack of communication from supervisor to employee that showed no sign of abating, it was impossible for the employment relationship to continue. Accordingly, claimant quit work because he faced a grave situation.

Further, claimant had no reasonable alternative to quitting. Given the small size of the employer, and that there was no one in authority other than the owner, claimant was left with no option to remedy the lack of communication from the owner but to continue to talk to the owner in hopes of a response, which claimant did. The owner's continued refusal to respond to claimant in any way except to confirm whether he was quitting suggested that any other actions claimant could have taken to preserve the employment relationship would have been futile. Therefore, claimant had no reasonable alternative to quitting work.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment benefits based on the work separation.

DECISION: Order No. 23-UI-237110 is set aside, as outlined above.

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

DATE of Service: November 20, 2023

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 الاستئناف 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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