

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1234

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 16, 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 September 24, 2023 (decision # 72133). Claimant filed a timely request for hearing. On November 2, 2023, ALJ Adamson conducted a hearing, and on November 3, 2023, issued Order No. 23-UI-240387, affirming decision # 72133. On November 6, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his 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 him 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) O'Reilly Auto Parts employed claimant, most recently as a merchandiser, at their store in Stayton, Oregon from September 17, 2021, until September 26, 2023.

(2) For most of claimant's tenure with the employer, he worked as a delivery driver. At some point prior to June 25, 2023, in the course of his work as a driver, claimant was required to interact with a customer about a car part. On that occasion, claimant and the customer were having "a little bit of miscommunication" about the part. Transcript at 11. The employer's assistant store manager came over and told the customer, within earshot of other workers, "don't worry about him, he's a driver . . . he doesn't really know anything." Transcript at 11. Claimant thought the assistant store manager's comments were unprofessional.

(3) On June 25, 2023, the employer transferred claimant from the driver position to a merchandiser position. Claimant believed that the employer agreed to give claimant a \$1.00 per hour pay raise for the

merchandiser position, to be effective on the date of claimant's next performance evaluation in September 2023.

(4) On an occasion after claimant became a merchandiser but before September 26, 2023, claimant was at the store performing his job duties, which entailed checking in freight and getting items set out on store shelves. The assistant store manager and a delivery driver were also working that day, and claimant noticed that the assistant store manager, rather than assigning some of the freight tasks to the driver, kept adding more work for claimant to do while she chatted with the driver. Claimant felt the assistant store manager treated him unfairly by adding to his workload and not assigning some tasks to the driver.

(5) On August 8, 2023, claimant had an accident at work in which his legs gave out and he hit his head. The assistant store manager was working that day, and claimant informed her of the accident. The assistant store manager did not seem concerned upon learning of the accident.

(6) On August 9, 2023, claimant hit his head a second time, while he was at home. Claimant sought medical attention and, on August 11, 2023, was diagnosed with a concussion. Claimant took August 12, 2023, off work to recover. August 13 and 14, 2023 were claimant's scheduled days off.

(7) When claimant returned to work on August 15, 2023, the employer informed him that the hours of his merchandiser position were being reduced, from approximately 40 hours per week to approximately 22 hours per week. Claimant believed the assistant store manager had "kind of berat[ed] [him]" at times about his speed checking in freight and get items out of the store's shelves. Transcript at 12. However, the employer reduced the hours of the merchandiser position due to the needs of the store, not based upon claimant's performance.

(8) Following August 15, 2023, claimant "tried to move forward and just . . . see if [he] could get [his] hours back." Transcript at 16. Claimant brought up with the employer the fact that his hours had been reduced. The employer offered for claimant to make up hours working at other stores, but claimant did not want to work at stores other than the Stayton store.

(9) In September 2023, claimant had his performance evaluation and believed that the employer told him that he would only get a \$0.25 pay raise. Transcript at 23.

(10) Claimant's typical days off work were Sunday and Monday of each week. On Monday, September 18, 2023, the employer scheduled claimant to work. However, claimant asked the employer's store manager for permission to work his typical Tuesday through Saturday schedule that week, and the store manager agreed. Claimant did not work September 18, 2023. When claimant returned to work the next day, he mistakenly believed the employer had considered him to have no showed for the shift on September 18, 2023, and that the assistant store manager had placed a write-up in claimant's record for missing the shift. Claimant contacted the employer's Human Resources (HR) department about the matter. On September 20, 2023, an employee from the HR department informed claimant he was not considered to have no showed September 18, 2023, and he was not given a write-up.

(11) On or about September 26, 2023, claimant "noticed there was a full-time position available for the counter position" and inquired about transferring into the position. Transcript at 16. On September 26, 2023, claimant had the meeting with the employer's district manager and store manager regarding

claimant becoming a counter worker. The two offered claimant the counter worker position and mentioned that it would be a trial run, because it would necessitate changing claimant's Tuesday through Saturday schedule to a schedule working nights and weekends and having days off during the week. The assistant store manager joined the meeting and stated that she did not like working with claimant because she believed claimant had given the wrong car parts to customers and made other errors that cost the employer money. The district manager asked the assistant store manager if she could look past her prior issues with claimant and "start anew" and the assistant store manager responded, "no." Transcript at 32. Claimant felt slandered by the assistant store manager's comments and felt he did not have an opportunity to defend himself. The end of claimant's shift coincided with this portion of the meeting and claimant left for the day without the assistant store manager's opposition to working with claimant as a counter worker being resolved.

(12) Shortly thereafter, claimant contacted the HR department and had a discussion with an HR employee in which he conveyed what the assistant store manager had stated in the meeting and stated that he felt uncomfortable working with the assistant store manager. The HR employee told claimant that the assistant store manager "can voice concerns that they have . . . to leadership and it is up to leadership to verify if the concerns are legitimate and need to be addressed." Exhibit 1 at 6.

(13) After this conversation with HR, claimant felt there was nothing that was going to be done regarding the assistant store manager and that he wasn't wanted at the store anymore. Claimant decided to quit working for the employer because he "just didn't wanna deal with" the assistant store manager, "just couldn't be around her," and "just felt too uncomfortable to be there anymore." Transcript at 25-26. Another factor that "probably did make [claimant] leave" was claimant's belief that the employer agreed to give him a \$1.00 per hour pay raise for the merchandiser position, and believed that the employer told him at the time of his September 2023 performance evaluation that he would only get a \$0.25 pay raise. Transcript at 23.

(14) On September 26, 2023, claimant tendered his resignation effective that day.

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 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 failed to meet his burden to prove that he quit work with good cause. To the extent claimant quit working for the employer because tension with the assistant store manager made him uncomfortable, claimant did not face a situation of such gravity that he had no reasonable alternative but to leave work. At hearing, claimant testified that the assistant store manager was hostile toward him, had an "authoritarian attitude," and did not care for claimant's well-being as an employee. Transcript at 21-

22. The record shows that claimant and the assistant store manager had a tense working relationship stemming from the occasions when the assistant store manager stated to a customer that claimant “doesn’t really know anything,” when claimant perceived the assistant store manager to have given him more work while she chatted with a delivery driver, as well as the fact that claimant felt the assistant store manager did not seem concerned upon learning that claimant hit his head on August 8, 2023, and that claimant believed she berated him at times about his speed checking in freight. Transcript at 11. While this evidence suggests that claimant and the assistant store manager had a difficult working relationship, claimant failed to show that no reasonable and prudent person would have continued to work for their employer for an additional period of time based on the assistant store manager’s treatment of him. The record lacks evidence that the assistant store manager ever subjected claimant to name-calling, foul language, or abuse. It is also not evident that, in his position as a merchandiser, claimant was required to directly report to the assistant store manager or work with her every day, as claimant testified that his immediate supervisor was the store manager and he worked with the assistant store manager only a couple of days per week. Transcript at 21. Moreover, the record contains evidence that some of the conduct claimant regarded as mistreatment by the assistant store manager, such as his mistaken belief that she had written him up for missing a shift on September 18, 2023, when he had permission not to work that day, did not actually occur.

At hearing, claimant also stated that the assistant store manager’s comments during the September 26, 2023, meeting “was the tipping point” that caused him to quit. Transcript at 5. Claimant elaborated that he was concerned that if he took the position as a counter worker, the assistant store manager would slander him by falsely stating he was a bad worker. Transcript at 9. It is correct that the assistant store manager made clear at the September 26, 2023, meeting that she did not like working with claimant and would not look past prior issues. However, it is not evident that she would have been in a position to evaluate claimant’s work performance negatively had claimant not quit and proceeded to take the counter worker job, as claimant testified that taking the counter worker job would only “possibly” result in the assistant store manager “watching my work ethic and to essentially evaluate me through there[.]” Transcript at 8.

Moreover, claimant failed to show why he could not have simply continued working as a merchandiser, and thereby remain in a job in which his interactions with the assistant store manager were more limited. The record shows that the reason claimant pursued the counter worker job was because the counter worker position had full time hours and, after August 15, 2023, claimant’s hours as a merchandiser were reduced from approximately 40 hours per week to about 22 hours per week.¹ However, after his merchandiser hours were reduced, the employer offered for claimant to make up hours working at other stores, but claimant did not want to work at stores other than the Stayton store. Furthermore, claimant did not offer evidence to show how quitting his merchandiser job, even with its less-than-ideal reduced hours, benefited him, since doing so meant that he no longer had a job at all. *See Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good

¹ Claimant did not assert at hearing that the reduction in hours of his merchandiser job was the reason he quit working for the employer. Note that a claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e). To any extent the reduction in hours of claimant’s merchandiser job was why he quit, claimant did not assert or show that continuing to work as a merchandiser at 22 hours per week would interfere with a return to full time work or that the costs associated with working as a merchandiser exceeded the amount of remuneration he received working 22 hours per week.

cause to voluntarily leave work, the claimant must derive some benefit for leaving work). Viewing the record as a whole, claimant failed to establish that the assistant store manager's comments at the September 26, 2023, meeting were such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Finally, to the extent claimant left work because he believed that the employer agreed to give him a \$1.00 per hour pay raise for the merchandiser position but told him during his September 2023 performance evaluation that he would get only a \$0.25 per hour pay raise, claimant left work without good cause. Similar to the point made above, claimant failed to show how quitting his job because of not receiving a pay raise as high as he believed he was promised provided any benefit to him because, by quitting his job due to a disagreement over the amount of his pay raise, claimant lost his source of income entirely.

For these reasons, claimant voluntarily quit working for the employer without good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits effective September 24, 2023.

DECISION: Order No. 23-UI-240387 is affirmed.

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

DATE of Service: December 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.

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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

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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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