

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0042

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 141340). The employer filed a timely request for hearing. On December 21, 2023, ALJ Fraser conducted a hearing, and on December 22, 2023 issued Order No. 23-UI-244018, reversing decision # 141340 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective August 13, 2023. On December 29, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's 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 her from offering the information during the hearing. 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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Churchill Estates employed claimant as a Health Services Director at their residential facility from March 2, 2023 until August 15, 2023. Claimant was licensed as a registered nurse (RN) as required for her position.

(2) On April 30, 2023, an incident occurred at the facility in which approximately 26 residents did not receive their medication. The employer believed that claimant, who had been called into work that day due to being short-staffed, "did not stick around to assist" with the administration of medication to all of the residents. Transcript at 17. Claimant believed that the incident was caused by "circumstances that were far out of [her] control" and for which she was not responsible. Transcript at 12. A state regulatory agency later conducted an investigation of the incident which included interviewing claimant. Claimant believed that the agency "considered [her] a perpetrator" in the incident. Transcript at 12.

(3) In late April or early May 2023, the state agency ordered the facility to temporarily close its kitchen due to “cleanliness” issues. Transcript at 23.

(4) At some point during claimant’s employment, the employer voluntarily stopped admitting new residents while they “focused on [their] current staff and residents.” Transcript at 30.

(5) At some point during claimant’s employment, the employer considered rehiring a “med tech who was fired for handing a . . . cup of pills to a caregiver to give to the resident.” Transcript at 13. Claimant considered this to be “gross misconduct.” Transcript at 7. The employer ultimately did not rehire the employee.

(6) In early July 2023, the employer decided to discharge a licensed practical nurse (LPN). Claimant participated in discussions with the employer about whether the LPN should be discharged, but was not ordinarily involved in telling employees they were being discharged. The employer did not immediately notify the LPN of her discharge and waited approximately a week after the decision was made. On the day the employer planned to discharge the LPN, the LPN called in sick. The employer therefore directed claimant and two other employees to join an administrator in a conference call in which they informed the LPN of her discharge. Claimant did not want to be part of the call, but did so without voicing disagreement.

(7) On July 12, 2023, claimant submitted a resignation to the employer via email, stating it would become effective July 25, 2023. She nevertheless continued working for the employer until August 15, 2023. Claimant quit because “it was an entirely too unstable of a facility” and she feared losing her nursing license as a result.

(8) At some point during claimant’s employment, claimant contacted the owner of the facility about her concerns. The owner believed the employees at the facility “were doing a good job” and claimant therefore did not pursue any concerns about the facility further.

(9) In September 2023, the state agency investigating the April 30, 2023 medication incident concluded that any allegations made against the employer relating to the incident were “unsubstantiated.” Transcript at 19.

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 submitted her resignation when she did because she was asked to participate in a conference call to discharge another employee, and this added to dissatisfaction claimant had with the employer arising from several prior incidents. While the record suggests that claimant may have found having to participate in the call distasteful, she had willingly participated in the earlier “conversations regarding. . . why [the discharge] did need to happen.” Transcript at 30. The employer’s witness testified that claimant did not voice any objection to either the decision to discharge the employee or to participate in the call informing the employee of the discharge, but if she had, the employer “probably wouldn’t have forced” claimant to participate in the call. Transcript at 26. That claimant did not tell the employer that she objected to participating in the call suggests that claimant herself did not consider the situation particularly grave. Additionally, the record does not show that anything unexpected or emotionally harmful to claimant occurred during the call. Claimant has therefore not demonstrated that having to participate in the call created a situation of such gravity that she could not have continued to work for the employer thereafter.

Claimant testified that she chose July 12, 2023 to submit her resignation because of having to participate in the call, however she stated that the decision to quit was based on “an accumulation” of things that had occurred over the course of her employment. Transcript at 8. One incident which claimant testified went “against [her] moral values” was the employer’s consideration of rehiring a previously discharged “med tech.” Transcript at 7. As claimant later testified, the employer did not rehire this employee. Transcript at 13. Claimant did not offer any explanation as to why the employer’s mere consideration of a job applicant, who was ultimately not rehired, presented a situation of such gravity that claimant could not continue working for the employer.

The other instances cited by claimant as part of her reasons for quitting involved the state of the employer’s operations in late April 2023. On April 30, 2023, claimant was apparently called into work due to the facility being short-staffed that day. Due to that lack of staff, approximately 26 residents of the facility did not get their medications that day. It is unclear from the record what, if any, responsibility claimant had for these residents not receiving their medication. However, it can reasonably be inferred that the employer did not discipline claimant for her actions that day, even if they may have believed claimant bore some responsibility for the incident. An investigation of the facility and this incident was conducted by the state, with the facility’s kitchen being temporarily closed as a result, and the facility voluntarily ceasing admissions for a time. This incident and the ensuing investigation were understandably concerning to claimant, who testified she “was now considered a perpetrator for 14 residents missing their medications[.]” Transcript at 12. It is not explained in the record whether the investigator concluded that claimant was a “perpetrator” based on the results of their investigation, or if that term was simply used to refer to any person against whom a complaint had been made. Regardless, claimant testified, “I quit because I was in fear of things happening to where I could lose my [nursing] license.” Transcript at 10.

Claimant did not show that her concerns about her nursing license constituted a grave situation. The employer took steps to improve their operations following the April 2023 incident, which included closing the kitchen until it was able to operate properly and halting admissions while staffing and other problems were addressed. The investigation into the residents’ failure to receive medications was apparently ongoing when claimant quit work, and complaints against the employer stemming from that incident were ultimately deemed “unsubstantiated” by the state shortly after claimant quit. Transcript at 19. While the record does not reveal how claimant ultimately fared in the investigation, even if the state

found claimant personally culpable in some way for the medication incident, claimant has not shown that her license would have been in jeopardy thereafter by *continuing* to work for the employer. To the contrary, the record suggests that the employer took several affirmative actions following the incident to ensure that the facility and their employees would meet state standards of care going forward. Therefore, claimant's fear that her license would have been at risk by continuing to work for the employer, as opposed to fearing repercussions she felt would have been unjust from the incident that had already occurred, did not constitute a grave situation. Accordingly, claimant has not met her burden of showing that her reasons for quitting, individually or in combination, were of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time. She therefore quit work without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective August 13, 2023.

DECISION: Order No. 23-UI-244018 is affirmed.

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

DATE of Service: February 6, 2024

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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