

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0047

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 26, 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 July 16, 2023 (decision # 72952). Claimant filed a timely request for hearing. On December 11, 2023, ALJ Fraser conducted a hearing at which the employer failed to appear, and on December 12, 2023 issued Order No. 23-UI-243201, affirming decision # 72952. On January 2, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) C.F. Jensen Farms, LLC employed claimant as a farm foreman from March 2011 until July 22, 2023.

(2) During claimant's employment, the business was jointly owned by C.J. and J.J., who were husband and wife, respectively. In July 2023, C.J. was experiencing health problems that impeded his ability to oversee the farm. Therefore, their son, C.J.J., "help[ed] oversee the farm." Audio Record at 20:50. Claimant was directed to address all work problems to C.J.J. rather than C.J. due to his condition.

(3) On July 22, 2023, claimant and the crew he led were cleaning up some hay that C.J.J. had spilled a week earlier. Claimant had discussed with J.J. that he would be doing this work. C.J.J. drove up to claimant while he was working, got "in [his] face," and began to "threaten [and] shove" claimant while "cussing [him] out." Audio Record at 9:18. C.J.J. was upset that claimant "threw him under the bus" by telling J.J. that he had spilled the hay. Audio Record at 10:00. One of claimant's coworkers intervened and claimant walked away to his vehicle and left work.

(4) After claimant left, he reported the incident to the sheriff but stated that he did not want charges filed against C.J.J. He requested that a deputy accompany him to the farm to retrieve personal belongings,

such as tools, that he had planned to take home with him that day before the incident occurred, but the sheriff did not accommodate the request.

(5) Within 20 to 30 minutes of claimant's leaving, C.J.J. called claimant, but claimant did not answer the call. Claimant also failed to answer a second call from him later in the day. C.J.J. did not leave a message after either call.

(6) On Monday, July 24, 2023, claimant's next scheduled workday, claimant did not report for work at his usual starting time of 7:00 a.m. He expected that, prior to his returning to work, C.J. or J.J. would call him to discuss the July 22, 2023 incident. He expected them to call by 9:00 a.m., the latest they typically began their work activities. At some time between 7:00 a.m. and 9:00 a.m., the employer's office manager texted claimant that his final paycheck was ready and asked whether he wanted it mailed or would pick it up. Claimant concluded from this that he had been discharged. He did not attempt to clarify his employment status and did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

Nature of the work separation. If an 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 an 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).

Claimant contended that the work separation was a discharge rather than a voluntary leaving. He testified that he intended to continue working for the employer when he left work early on July 22, 2023. Audio Record at 18:27. Claimant testified that when he left, "It's possible I could have said something to one of the other employees . . . that I may quit." Audio Record at 25:30 to 26:30. Claimant then filed a police report against C.J.J., who was effectively his supervisor, and twice refused to answer telephone calls from C.J.J. Claimant did not report to work for his next scheduled shift or attempt to contact the employer to explain his absence or discuss the July 22, 2023 incident. It is reasonable to infer from these facts that claimant did not intend to return to work unless the owners acted on their own to address the threat their son posed to claimant. They did not take any action between claimant's leaving on July 22, 2023 and the beginning of claimant's next scheduled shift the morning of July 24, 2023. Therefore, more likely than not, claimant was unwilling to return to work after July 22, 2023 because the owners were unwilling to discipline their son. Accordingly, the work separation is characterized as a voluntary leaving.

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 quit work because he was threatened and shoved by his supervisor, C.J.J., without provocation. The order under review concluded that claimant quit work due to a grave situation, but had reasonable alternatives to leaving and therefore did not quit work with good cause. Order No. 23-UI-243201 at 3. While the record supports the conclusion that claimant quit work due to a grave situation, it does not show that he had any reasonable alternatives to quitting.

After claimant was threatened and physically attacked by C.J.J., claimant immediately left the worksite and contacted the sheriff to report the incident and request an escort to retrieve his belongings. It can reasonably be inferred from these actions that claimant was afraid of C.J.J. being violent toward him again. If the owners planned to take disciplinary action against their son to ensure claimant's safety, they likely would have personally attempted to communicate this to claimant. Claimant therefore concluded that C.J.J. would not be disciplined and the workplace would have remained unsafe if claimant returned. The threat of repeated physical violence from claimant's supervisor constituted a situation of such gravity that no reasonable and prudent person would have continued to work for their employer under those circumstances for an additional period of time.

Further, claimant did not have a reasonable alternative to quitting. Alternatives to leaving work may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. *See Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996). Though the purpose of C.J.J.'s calls to claimant following the incident is unknown, the record does not suggest that even an apology would have allayed claimant's fears of continued violence, and therefore communicating with C.J.J. likely would have been futile. Similarly, appealing to the owners to remove their son from the daily operations of the farm or otherwise separate him from claimant would also have been futile since they were C.J.J.'s parents who relied on him to oversee the farm due to C.J.'s health problems. The owners' silence following the incident also suggests that they did not intend to take any action on their own to protect claimant from their son. Accordingly, there were no alternatives to leaving that would have ensured claimant's safety from C.J.J. in the workplace. Claimant therefore quit work with good cause.

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

DECISION: Order No. 23-UI-243201 is set aside, as outlined above.

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

DATE of Service: February 7, 2024

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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