

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0062

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 30, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective September 3, 2023 (decision # 145226). Claimant filed a timely request for hearing. On December 26, 2023, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on January 3, 2024 issued Order No. 24-UI-244659, modifying decision # 145226 by concluding that claimant was disqualified from receiving benefits effective August 27, 2023.¹ On January 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Metro One Loss Prevention Services employed claimant from August 28, 2022 until September 3, 2023. The employer provided private security services for their clients. Claimant worked at the distribution center of one of the employer's clients. Claimant began work as a security guard, but was later promoted to site supervisor.

(2) Claimant is a transgender woman. During the entirety of her tenure with the employer, claimant was never known by any name other than her name of record with the Department.

(3) Claimant initially reported directly to the employer's regional manager. In May 2023, the site supervisor at the time announced that they would be quitting for another job, leaving their position vacant. That supervisor "strongly recommended" claimant to replace them as the new site supervisor. Transcript at 14. However, the regional manager, who knew that claimant was transgender, attempted to appoint a different individual to the supervisor position because the manager "[did] not want somebody like [claimant] to be a supervisor." Transcript at 14. Claimant understood that to mean that he did not

¹ Although the order under review stated that it affirmed decision # 145226, it modified that decision by changing the effective date of the disqualification from September 3, 2023 to August 27, 2023. Order No. 24-UI-244659 at 3.

want to promote her because she was transgender. The regional manager also had previously referred to claimant as “him, her, or whatever.” Transcript at 15.

(4) In or around May 2023, claimant filed a complaint with the employer’s human resources (HR) department, citing discrimination and harassment by the regional manager on the basis of claimant’s gender identity.

(5) Although the regional manager initially decided not to appoint claimant to the site supervisor position, he faced enough protest from other employees that claimant was eventually appointed to the position in or around June 2023. Around the same time, the employer appointed an “operational manager” as claimant’s direct supervisor so that claimant would no longer have to report to the regional manager or be considered in his “chain of command.” Transcript at 5, 17. The operational manager reported directly to the regional manager. Additionally, the employer prohibited the regional manager from contacting or communicating with claimant.

(6) Despite the no-contact order, the regional manager contacted claimant on at least two occasions after the order was instituted. After the first violation of the no-contact order, claimant notified HR about it. HR responded to claimant by stating that they would “look into it.” Transcript at 44. Claimant never witnessed any repercussions from the regional manager’s violation of the no-contact order.

(7) On August 24, 2023, claimant worked her last shift for the employer. Claimant’s regular days off were Friday through Sunday, and she therefore did not work from August 25 through 27, 2023. Claimant called out from work from August 28 through 31, 2023 because her mother had been hospitalized. Claimant was regularly scheduled off from September 1, 2023 through September 3, 2023, and intended to return to work on September 4, 2023.

(8) On August 30, 2023, the regional manager violated the no-contact order a second time. On this occasion, he left a voicemail for claimant, claiming that he wanted to “check on” her because of her mother’s illness. Transcript at 12. In the voicemail, the regional manager addressed claimant using a masculine version of her name. Claimant had never been known by that name while she worked for the employer. Claimant’s receipt of the voicemail, coupled with the stress of her mother’s illness, caused her to suffer a panic attack that required medication and therapy. Claimant had suffered from panic attacks several years prior, though the circumstances which caused them were unrelated to these circumstances.

(9) On August 31, 2023, claimant contacted HR via email to complain about the regional manager’s having again violated the no-contact order and misgendered her. Claimant also notified the employer that she intended to quit. HR did not respond to claimant’s email.

(10) Over the course of the ensuing weekend, claimant thought about her resignation notice and considered whether she wanted to rescind it and continue working for the employer. However, she ultimately decided to quit, effective September 3, 2023, and did not return to work for the employer. Claimant decided to quit because the regional manager repeatedly harassed and discriminated against her, most recently by violating the no-contact order a second time.

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 voluntarily quit work due to the regional manager’s having harassed and discriminated against her on the basis of her gender identity, most recently by violating the no-contact order on August 30, 2023. The order under review concluded that this did not constitute good cause for quitting because claimant “should have waited to see what other steps human resources would take in response to her new complaint about her former supervisor,” and because “she could have continued working for an additional period of time, at least until she found another job she preferred elsewhere.” Order No. 24-UI-244659 at 3. The record does not support this conclusion.

The record shows that the regional manager, who was claimant’s direct supervisor at the time, actively sought to prevent claimant from being promoted because he did not want “somebody like” claimant—i.e., a transgender person—to be a supervisor. This appears to be discrimination based on claimant’s gender identity and, potentially, illegal under Oregon law.² The record is somewhat unclear as to how claimant overcame this discrimination and ultimately was promoted to site supervisor. For example, it is not clear whether HR, or anyone above the regional manager, overrode the regional manager and appointed claimant to the site supervisor position. The only clear response that the employer made to claimant’s complaints of harassment and discrimination was to remove the regional manager from claimant’s chain of command and institute a no-contact order so that she would no longer have to interact with him. This response was apparently ineffective, as the regional manager violated the order twice with no apparent repercussions. In the second of these violations, the regional manager misgendered claimant by calling her by a masculine version of her name, causing her to suffer from a panic attack.

A reasonable and prudent person of normal sensitivity,³ exercising ordinary common sense, would not continue working for an employer who permits a member of management to repeatedly harass and discriminate against them on the basis of their gender identity, particularly when that treatment also causes them to suffer from panic attacks that require medical intervention. Therefore, the above shows that claimant faced a grave situation.

² See ORS 659A.030.

³ A claimant with a permanent or long-term “physical or mental impairment,” as defined at 29 CFR §1630.2(h), must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time. OAR 471-030-0038(4). However, while claimant had previously experienced panic attacks years prior for reasons unrelated to these circumstances, the record does not show that claimant actually suffered from a diagnosed or presumed impairment that had persisted long enough to be considered permanent or long-term. Therefore, this analysis considers claimant’s circumstances from the perspective of an individual without a permanent or long-term impairment.

Furthermore, claimant had no reasonable alternative but to quit. The order under review suggested that claimant “should have waited to see what other steps human resources would take in response to her new complaint” about the regional manager. However, despite claimant’s initial complaint that the regional manager had attempted to prevent her from being promoted due to her gender identity, the employer permitted the regional manager to continue in a position of authority, instead simply instituting a no-contact order. There is no indication that the employer made any attempt to enforce that order, however, as the regional manager continued to contact claimant, and the record lacks evidence to show that these violations resulted in any repercussions for the regional manager. Facing such responses, a reasonable and prudent person would conclude that any further attempts to seek redress from HR would be futile. Doing so would therefore not have been a reasonable alternative to quitting.

Finally, while the order under review suggested that claimant could have continued working for the employer until she found other work, the Oregon Court of Appeals has held that continuing to work until the individual has found other work is not a reasonable alternative to quitting. *See Hill v. Employment Dep’t.*, 238 Or App 330, 243 P3d 78 (2010); *see accord Warkentin v. Employment Dep’t.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep’t.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep’t.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep’t.*, 256 Or App 682, 303 P3d 957 (2013). Therefore, this was not a reasonable alternative.

Because claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-244659 is set aside, as outlined above.

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

DATE of Service: February 13, 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.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.