

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0152

Affirmed
Eligible Weeks 50-23 through 01-24
No Disqualification

PROCEDURAL HISTORY: On December 28, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from December 10, 2023 through January 6, 2024 (weeks 50-23 through 01-24), a school recess period, because claimant was likely to return to work for the employer after the break, and claimant's wages and/or hours with other employers were not sufficient to entitle her to benefits during the recess period (decision # 134051). Also on December 28, 2023, the Department served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective November 26, 2023 (decision # 131430). Claimant filed timely requests for hearing.

On January 30, 2024, ALJ Lucas conducted a consolidated hearing, and on February 1, 2024, issued Order No. 24-UI-247115, reversing decision # 134051 by concluding that claimant was not likely to return to work for the employer after the recess period and was therefore eligible to receive benefits on that basis for weeks 50-23 through 01-24. Also on February 1, 2024, ALJ Lucas issued Order No. 24-UI-247086, reversing decision # 131430 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On February 3, 2024, the employer filed applications for review of Orders No. 24-UI-247115 and 24-UI-247086 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-247115 and 24-UI-247086. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0153 and 2024-EAB-0152).

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.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 24-UI-247115 is **adopted**. The rest of this decision addresses Order No. 24-UI-247086, regarding claimant's work separation.

FINDINGS OF FACT: (1) Lane Community College employed claimant as a dental clinic coordinator from December 11, 2017, until December 1, 2023.

(2) In May 2020, the clinic's dental director resigned. The position thereafter went unfilled for more than two years. Claimant's supervisor was the school's dean. However, when the position was not vacant, claimant also reported to the dental director.

(3) Claimant did not feel "supported" by the person who served as dean from early 2020 through the end of claimant's employment. Transcript at 41. Claimant felt this way because she believed the dean did not follow procedures to which claimant had become accustomed, did not seek or value her opinion, did not sufficiently or timely resolve complaints to her satisfaction, and made various decisions regarding the clinic with which claimant disagreed. In 2023, claimant also had difficulties with two disruptive employees whom she supervised yet did not have the authority to discharge, and was upset that the dean was taking too long to discharge those employees as she requested.

(4) In August 2023, the employer hired a new dental director, to begin work on September 5, 2023. Claimant was responsible for obtaining information from the director in order to satisfy various licensing, accreditation, and insurance contract requirements prior to the director practicing dentistry at the clinic. The director immediately "had concerns about how the clinic was operating" and therefore refused to practice dentistry at the clinic and engaged only in administrative duties. Transcript at 45. The director refused to provide claimant with the information she needed for the director to practice dentistry.

(5) Throughout September 2023, claimant repeatedly asked the director for the information, as did the dean at claimant's request. The director repeatedly told the dean that she would provide the information to claimant, but never did. The director "had pretty big disagreements" with claimant and "some pretty heated arguments" that both parties later reported to the dean. Transcript at 54. Claimant believed that the clinic was "functioning illegally" because of the director's failure to provide the requested information. Transcript at 59.

(6) By October 2023, claimant believed that the work environment, particularly with regard to her concerns about the director, was "impacting [her] health." Transcript at 36. This resulted in claimant experiencing symptoms of anxiety, stress, and sleeping difficulties, for which she sought treatment.

(7) Claimant complained to the union that represented her and to the human resources department about the director and about the dean's failure to remedy her complaints, but her concerns were not resolved. Claimant also explored the possibility of transferring to another comparable position with the employer where she would not have to work with the director or the dean, and applied for the one such position she found, which she was ultimately not offered. This may have occurred through a procedure set up by

the employer for employees to request a transfer to available positions without the involvement of their supervisor.

(8) Claimant did not seek a leave of absence prior to submitting her resignation, in part because it appeared that a period of leave would not have resolved, on more than a temporary basis, her conflict with the director and the dean.

(9) On October 13, 2023, claimant told the dean that she was resigning effective December 1, 2023. The employer immediately accepted her resignation on these terms. Claimant resigned because the conflict with the director, when combined with the preexisting issues she had with the dean and subordinate employees, rendered the work environment “very unfunctional, unmanageable, [and] hostile.” Transcript at 36.

(10) In early or mid-November 2023, the director and the employer reached an agreement that the director would separate from employment on December 15, 2023. Claimant was immediately advised of the director’s planned separation, but was not offered the opportunity to rescind her resignation.

(11) Claimant did not work for the employer after December 1, 2023.

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)I; *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 gave her resignation on October 13, 2023, because she felt that her contentious relationship with the director, whose installation in that position claimant believed was causing the clinic to operate illegally, made already difficult working conditions “unmanageable.” The dean countered claimant’s assertion regarding the legality of the situation, testifying that the clinic at no time operated illegally because the director did not practice dentistry at the clinic. Transcript at 45. The record does not show which laws claimant believed the director or clinic had violated, and the Oregon statutes likely applicable to the situation support the dean’s testimony that the clinic was not operated unlawfully.¹ However, even if claimant was mistaken in her belief that the clinic was being operated unlawfully, the record shows that the entirety of the circumstances she faced constituted a grave situation.

¹ See ORS 679.020(3)(e), providing that institutions or programs accredited to provide education and training are exempt from the requirement that clinics be operated by a licensed dentist; ORS 679.020(4), providing that such an institution or program is exempt from the requirement that their clinic name a licensed dental director; ORS 679.025, providing, in relevant part, that instructors of dentistry engaged in teaching activities and employed by an accredited institution, and dentists employed by public health agencies but not engaged in the direct delivery of clinical dental services to patients, are exempt from the requirement they be licensed to practice dentistry.

The dean testified that the director “had pretty big disagreements” with claimant about several issues and that both reported to him in separate conversations that they had had “some pretty heated arguments.” Transcript at 54. Claimant was “frustrated” that the director continued to refuse to provide information to her, while the director promised the dean she would do so. Transcript at 38. This refusal led claimant to mistakenly believe that claimant was facilitating the unlawful operation of the clinic by continuing to work for the employer without having obtained this information. Claimant testified that the situation “got to a point where I feel like it was impacting my health,” and described some health symptoms she experienced, some of which prompted her to seek treatment. Transcript at 36. Claimant also testified, “I did not work on any days that the new dental director was in the building. I took sick days and did appointments.” Transcript at 42. Claimant’s efforts to resolve her conflict with the director through the dean were unsuccessful, and exacerbated preexisting tensions between claimant and the dean over separate personnel matters and other complaints which she perceived the dean as being slow to remedy, even as those matters negatively impacted her work environment daily. The combination of these factors caused claimant to submit her resignation on October 13, 2023. The fact that the relationship between claimant and the director to whom she reported had deteriorated to the point where they could not even be in the same building at the same time constituted a situation of such gravity that no reasonable and prudent person in such circumstances would have continued to work for the employer for an additional period of time.

Further, claimant had no reasonable alternatives to leaving. Claimant reported her concerns about the director, and her other ongoing concerns, to the dean, the human resources department, and her union. The dean suggested in his testimony that action was being taken on at least some of her concerns, namely the two subordinate employees that claimant believed should be discharged, but that he was bound by rules of confidentiality not to disclose information about this to claimant at the time. Transcript at 51. He also explained that discharging union-represented public employees was a lengthy and slow process, though one of the two employees was ultimately discharged on November 17, 2023. Transcript at 51-52. It is therefore understandable why claimant felt, at the time of her resignation, that no action was being taken by the employer on any of her complaints, and that making further complaints would be futile.

Yet, by mid-November 2023, claimant learned that the director would be separating from employment on December 15, 2023. This, along with demonstrable progress having been shown by the employer in discharging one of the two employees that had been contributing to claimant’s problematic work environment, suggests that claimant may no longer have faced a grave situation if her employment were to continue beyond December 15, 2023. Claimant rescinding her resignation based on this significant change in circumstances, if possible, would therefore have been a reasonable alternative to leaving work as planned on December 1, 2023.

However, an employee typically does not have a unilateral right to rescind their resignation if the resignation has been accepted, or has not been acted upon, by their employer. *See Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999). The record does not suggest that the employer offered to allow claimant to rescind her resignation once the circumstances that prompted her to resign changed, nor does it show that such a request, if initiated by claimant, would have been granted. Consideration of the availability of reasonable alternatives to quitting is limited to those which the record shows the employer was willing to consider. *Westrope v. Employment Dept.*, 144 Or. App. 163, 925 P.2d 587 (Or. Ct. App. 1996). Given the employer’s representative’s inquiries of the dean at hearing regarding various

alternatives to quitting that may have been available to claimant, without testimony being offered that claimant rescinding her resignation was such an alternative, it can be reasonably be inferred that the employer, more likely than not, would not have considered a request to rescind. *See* Transcript at 56. Accordingly, this would not have been a reasonable alternative to quitting.

A leave of absence, which claimant did not pursue, was also suggested by the employer as an alternative to quitting. Transcript at 56. As of October 13, 2023, the date claimant submitted her resignation, the grave situation claimant faced because of her conflict with the director was expected to continue indefinitely. Taking a leave of absence at that time therefore would not have been a reasonable alternative to claimant submitting her resignation, as claimant would have had to continue working with the director indefinitely upon returning from leave. However, these circumstances changed in mid-November 2023, when claimant learned the director would no longer be working for the employer after December 15, 2023. Therefore, as of December 1, 2023, claimant's final day of work, taking a leave of absence from that date through December 15, 2023, would likely have resolved the grave situation faced by claimant indefinitely, since it would have immediately resulted in claimant no longer working with the director. Nonetheless, this alternative to leaving work on December 1, 2023, would only have been available to claimant had the employer been willing to allow her to rescind her resignation and continue working indefinitely after that date. For reasons previously explained, the record does not show the employer was willing to allow claimant to rescind her resignation, and therefore a leave of absence was not a reasonable alternative to quitting.

Additionally, claimant testified that she pursued the alternative of transferring to a comparable position with the employer, but was not selected for an interview for the position to which she applied. Transcript at 38-39. The dean also testified to the existence of a "transfer list" where an employee could request a transfer to another position, if available, without their current supervisor's involvement. Transcript at 56. It is unclear if this was the same procedure claimant utilized in seeking to transfer. However, claimant testified that no other comparable positions with a different supervisor were available. Transcript at 38-39. Therefore, it is reasonable to infer that claimant sufficiently explored this alternative. Accordingly, claimant had no reasonable alternative but to leave work on December 1, 2023, and left work with good cause.

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

DECISION: Orders No. 24-UI-247115 and 24-UI-247086 are affirmed.

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

DATE of Service: March 11, 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 desisyong ito.

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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