

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0277

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 6, 2024, 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 October 1, 2023 (decision # 122713). Claimant filed a timely request for hearing. On March 5, 2024, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on March 8, 2024, issued Order No. 24-UI-249788, affirming decision # 122713. On March 16, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) RBC Capital Markets employed claimant as an operations associate from September 2022 until October 4, 2023.

(2) Claimant was an African American person, and from the beginning of his tenure with the employer, “felt as if [he] experienced some adversity due to [his] race.” Transcript at 14. On or about September 12, 2022, for example, one of claimant’s colleagues circulated an email that made light of Martin Luther King’s “I have a dream” speech. Transcript at 13. Claimant responded to the email that it was not appropriate and that “a lot of people suffer for their rights.” Transcript at 13.

(3) In March 2023, one of claimant’s colleagues threw a computer mouse at claimant. Claimant reported the incident to the human resources (H.R.) manager and the employer suspended the colleague for one day.

(4) In May 2023, claimant overheard one of his colleagues saying to another colleague that “these people think that they deserve reparations” and “I don’t owe these people anything.” Transcript at 9. Claimant viewed the comment as referring to African American people. Claimant felt the comment was unnecessary and told the colleague that the comment hurt his feelings. In response, the colleague “exploded on [claimant]” and told him that “African people, African-American people kill other African people and that [claimant] was being way too sensitive.” Transcript at 9.

(5) Claimant mentioned the May 2023 incident to his manager and the manager stated that the employee was valuable to the employer because she made money for the employer, “so if someone has to leave then [claimant] has to leave.” Transcript at 9. Claimant’s manager informed the employer’s H.R. department about the incident. The employer’s H.R. manager told claimant that claimant was “learning about new people.” Transcript at 9. The H.R. manager also told claimant to “keep [his] mouth shut and things like this wouldn’t happen.” Transcript at 10.

(6) Between May 2023 and September 2023, claimant felt he was micromanaged and often reported by colleagues for “miniscule incidents” such as when he took bathroom breaks. Transcript at 20. The employer had previously set up a dedicated chat thread on claimant’s work messaging application for claimant to request permission to use the bathroom. Sometimes, the employer would ignore claimant’s request to use the bathroom, or respond only after a long delay.

(7) The adversity claimant experienced at work caused him to develop physical symptoms of indigestion, stomach aches, bloating, and cramps. On September 18, 2023, claimant used accrued leave time to take the day off. Claimant did not work on September 19, 20, or 21, 2023 because he was ill and took sick days off work for those days. On September 22, 2023, claimant returned to work.

(8) During claimant’s absence from work, he “started to process” his experiences working for the employer and how they were affecting him. Transcript at 12. Claimant realized that working for the employer was negatively impacting his mental and physical health, and he decided to resign. Claimant considered pursuing a transfer to the employer’s other office, but concluded that the difficulties he experienced would persist because the employer had only one other office and the employees who worked at claimant’s present office also worked at the other office.

(9) On September 22, 2023, claimant gave notice of his intent to resign on October 4, 2023. Claimant used his accrued paid time off to cover his shifts during the notice period. Claimant resigned, as planned, on October 4, 2023.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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.

The order under review concluded that claimant voluntarily left work without good cause. Order No. 24-UI-249788 at 3-4. In particular, the order concluded that because the May 2023 incident occurred months before claimant’s October 4, 2023, resignation date, claimant did not face a grave situation. Order No. 24-UI-249788 at 3. The Order also concluded that claimant failed to pursue the reasonable

alternative of transferring to the employer's other office. Order No. 24-UI-249788 at 3-4. The record does not support these conclusions.

Claimant voluntarily left work with good cause. Claimant's uncontroverted evidence established that over the course of his tenure with the employer, he experienced several incidents that he credibly testified were the result of "adversity due to [his] race." Transcript at 14. For example, shortly after claimant began working for the employer, a colleague circulated an email that made light of Martin Luther King's "I have a dream" speech. Transcript at 13. In March 2023, another employee threw a computer mouse at claimant, and, in May 2023, yet another employee made comments about reparations, and when claimant advised that the employee's comments had hurt his feelings, the employee "exploded on [claimant]," stating that "African people, African-American people kill other African people and that [claimant] was being way too sensitive." Transcript at 9. From there, claimant experienced micromanagement that included requiring him to specifically make requests to use the bathroom, which requests the employer ignored at times. These difficulties negatively impacted claimant's mental health and caused him to develop physical symptoms of indigestion, stomach aches, bloating, and cramps. While away from work from September 18 through 21, 2023, claimant recognized that his mental and physical health were in decline due to his experiences working for the employer. This culminated in claimant's decision to resign effective October 4, 2023, and is sufficient to establish that claimant faced a grave situation at the time that he quit.

Claimant's uncontroverted evidence also established that he had no reasonable alternative but to quit when he did. The record shows that reporting his experiences to the employer for the employer to address them likely was futile. When claimant mentioned to his manager the May 2023 incident in which another employee made comments about reparations and "exploded on [claimant]," the manager stated that the employee was valuable to the employer because she made money for the employer, "so if someone has to leave then [claimant] has to leave." Transcript at 9. Similarly, when the H.R. manager was informed of the incident, the H.R. manager told claimant that he was "learning about new people" and to "keep [his] mouth shut and things like this wouldn't happen." Transcript at 9, 10. Furthermore, the record shows that transferring to the employer's office was not a reasonable alternative to quitting. Claimant's uncontroverted evidence established that, more likely than not, the workplace difficulties claimant experienced would persist in the employer's other office because the employer had only one other office and the employees who worked there also worked at claimant's present office.

For these reasons, claimant voluntarily left work for a reason of such gravity that he had no reasonable alternative but to quit when he did. Claimant therefore quit work with good cause and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 24-UI-249788 is set aside, as outlined above.

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

DATE of Service: April 25, 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 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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