

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0311

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 21, 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 24, 2023 (decision # 84526). Claimant filed a timely request for hearing. On February 1, 2024, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on March 7, 2024, issued Order No. 24-UI-249623, affirming decision # 84526. On March 26, 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) Honda of Beaverton employed claimant as an off-road vehicle salesperson at one of their dealerships from February 2023 until September 28, 2023. The employer operated other dealerships in the area that sold passenger vehicles. Claimant previously worked for other employers as a passenger vehicle salesperson for 15 years.

(2) Claimant's wages were based on commission. After a period of training, claimant typically sold approximately 40 vehicles per month. Claimant was satisfied with his earnings from this sales volume.

(3) In May or June 2023, claimant was assisting a customer who claimed to have been offered a deep discount on some products and wanted the employer's dealership to match the offer. Claimant relayed this to V., a desk manager, who told claimant to tell the customer to make her purchase at the dealership that made the offer. Claimant did so and the customer left. Later, claimant was asked by the dealership's upper management to recount his interactions with each customer during the day, and claimant did so, including this customer. After hearing about the interaction, the managers became upset that V. did not attempt to directly negotiate a deal with the customer and "came down on" V. Transcript at 20.

(4) V. blamed claimant for his managers' displeasure with him over the missed potential sale. V. thereafter gave slow responses when consulted by claimant, questioned his actions, and otherwise impeded claimant's ability to make as many sales as possible. Claimant spoke about the issue with M.F., who supervised V. Claimant felt that M.F. did not act to resolve the situation. Claimant then spoke about the issue with M., who was M.F.'s supervisor. M. talked to M.F., but claimant felt that this did not resolve the issue with V.

(5) In June or July 2023, claimant spoke with a representative in the employer's human resources department about dissatisfaction with his superiors. The representative advised claimant to work out his problems with M.F. and V. on his own. Claimant apologized to V. and this apparently resolved the conflict between them and ended V.'s efforts to impede claimant's sales.

(6) On July 26, 2023, M.F. sent an email to claimant, copied to other members of management and one salesperson who would soon become a member of management, warning claimant about attendance issues. The email detailed various recent absences and instances of tardiness which M.F. found cumulatively unacceptable. Claimant responded that the absences were later excused and that he had not been tardy but had difficulty punching in on time due to computer use policies. Claimant was upset by having received the warning and felt that he was being treated differently by M.F. than he treated other employees. M.F. eventually apologized to claimant after hearing his explanations.

(7) At some time during his employment, claimant sought to purchase a motorcycle from the employer at "employee pricing" but M.F. would not agree to the price claimant wanted, citing business reasons, and claimant made the purchase from a competitor. Exhibit 2 at 1. Claimant purchased a different vehicle from the employer on another occasion with an employee discount, "but only after pointing out the other employees [who had received] discounts[.]" Exhibit 2 at 1. Claimant felt that M.F.'s treatment of him regarding these transactions was "unfair." Exhibit 2 at 1.

(8) On September 5, 2023, claimant was not at work because he had been pre-approved to take leave for that day. Claimant received a message that M.F. wanted to know why he was not at work, and he replied that he had been granted leave. The managers reviewed their records and determined that claimant had, in fact, been granted leave for the day and M.F. later apologized for this mistake. Claimant was upset by having received the message and believed M.F. was "singling" him out. Exhibit 2 at 2.

(9) After returning from leave, claimant met with the human resources representative again to complain about M.F. The representative told claimant that management changes were coming to the dealership very soon. She also had told claimant that he had the option to transfer to another dealership where he would not have to work with M.F., but that M.F. would have to approve the transfer. As an alternative to getting M.F.'s approval, claimant could apply to a specific dealership, the employer would "hire" him to work there, and he would resign from the current dealership. Transcript at 46.

(10) By mid-September 2023, M. had resigned, M.F. was promoted to take M.'s position, and V. was promoted to take M.F.'s position. M.F. and V. were largely absent from the dealership for the following one to two weeks, attending to their new responsibilities elsewhere. Nonetheless, claimant's average monthly sales had fallen from 40 per month to 20-25 per month. Claimant attributed his reduced sales and commission income to M.F.'s disparate or unfair treatment of him. M.F. and V. returned to regular hours at the dealership by the final week of September 2023.

(11) On September 28, 2023, claimant notified the employer of his intent to resign, effective two weeks later, because he did not want to continue working with M.F. after M.F.'s promotion. The employer told claimant that they would not require him to work the notice period, and claimant agreed to allow his resignation to become effective that day. Claimant resigned due to his low sales and commissions, for which he blamed M.F. Claimant had not sought a transfer to another dealership prior to resigning because he preferred selling off-road vehicles to passenger vehicles, and employer's other dealerships only sold passenger vehicles.

CONCLUSIONS AND REASONS: Claimant 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 quit working for the employer because he had reduced sales and commissions, which he attributed to disparate treatment by a manager, M.F. Claimant's belief that he was being treated differently than other employees by M.F. was based on M.F.'s unwillingness to resolve a conflict between claimant and V., apparent misunderstandings or disagreements about claimant's attendance record, and claimant's difficulty in using an employee discount compared to other employees. The record is somewhat unclear as to M.F.'s motive in treating claimant differently than other employees, and as to whether and why this treatment continued after claimant reconciled with V. and M.F. was promoted.

To the extent claimant was displeased with M.F.'s failure to realize that claimant had been approved for a day of leave, and M.F.'s belief that claimant was excessively absent or tardy, M.F. apologized after hearing claimant's explanations, and these mistakes or misunderstandings did not evince disparate treatment or amount to a grave situation. Nonetheless, claimant's assertion that M.F. was responsible for claimant's declining sales and commissions, possibly for reasons that could constitute an unfair labor practice, was uncontroverted. If this disparate treatment and its effects on claimant were likely to continue, claimant may have faced a grave situation. However, claimant had a reasonable alternative to quitting.

The record shows that claimant originally experienced difficulties completing sales or getting credit for his sales and other commission-based work because V., as the desk manager, impeded these processes to retaliate against claimant for management learning of V.'s role in a transaction that management felt was handled inappropriately. Once claimant reconciled with V. in June or July 2023, any role V. had in impeding claimant's sales ended, leaving M.F. as the only source of claimant's job dissatisfaction. Claimant testified that after reconciling, V. "wasn't the issue that he was anymore. My issue was with [M.F.]. When he got promoted [in September 2023], that became the problem." Transcript at 64. Therefore, if claimant no longer had to work for or with M.F., he would not have faced a grave situation.

Claimant testified that when he complained to human resources, they advised him of an opportunity to transfer to an equivalent position at another of the employer's dealerships where M.F. would have no involvement in his work. Transcript at 45-46. Such a transfer would be conditioned on M.F.'s approval, but claimant testified that he did not ask for the transfer because he preferred to sell off-road vehicles rather than passenger vehicles, and a transfer would involve this change in the type of vehicle sold. Transcript at 65. Claimant's preference did not make the alternative unreasonable, as claimant had the training and experience to perform that type of sales work just as he had performed the off-road vehicle sales position.

Claimant also did not show that asking for M.F.'s approval for the transfer would likely have been futile, as it can be inferred that a manager who baselessly dislikes an employee, such as claimant believed was the situation here, would at least consider transferring such an employee so as to no longer have to work with them. And even if M.F. denied the transfer request, the employer told claimant that he could apply to the dealership of his choice and "we'll hire you," which likely would have accomplished the effect of a transfer without any interruption in claimant's employment status with the employer. Transcript at 46. Seeking a transfer was therefore a reasonable alternative to quitting that claimant did not pursue. Accordingly, claimant has not shown good cause for leaving work.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective September 24, 2023.

DECISION: Order No. 24-UI-249623 is affirmed.

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

DATE of Service: May 7, 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 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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