

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0394

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 15, 2024, 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 January 28, 2024 (decision # L0003085387). Claimant filed a timely request for hearing. On April 15, 2024, ALJ Christon conducted a hearing, and on April 16, 2024, issued Order No. 24-UI-252324, modifying decision # L0003085387 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective February 4, 2024. On April 23, 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 she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) New Season Foods, Inc. employed claimant as a department administrator of human resources from January 2024 until February 9, 2024. Claimant was placed in the position by a staffing agency.

(2) Days after claimant began working for the employer, she learned that she was in the early stages of pregnancy. Claimant immediately informed her supervisor of this. Claimant expressed concern about her ability to climb stairs, as needed to get to her office, when in the later stages of pregnancy. Claimant did not request a specific accommodation at that time and the employer began evaluating how they might accommodate claimant's future needs in this regard. Claimant's supervisor "mentioned in the office, openly," that she believed that the employer "deserved a discount" on the staffing agency's fee for finding a temporary replacement for claimant, when claimant eventually went on maternity leave. Transcript at 11. Claimant felt that the disclosure of her pregnancy to others, and in this fashion, was not appropriate.

(3) Due to her role in the employer's human resources department, which called for the appearance of independence and impartiality in dealing with other employees, the employer advised one of claimant's

coworkers that they should only discuss work matters with claimant and not socialize with her, including during their lunch break. Claimant found this policy “completely unreasonable.” Transcript at 6.

(4) The bathroom claimant used at the employer’s office contained two bins that “almost looked like giant trashcans” but had “like a hazardous material sign on them[.]” Transcript at 18. The bins served as a container for discarding paper towels and similar bathroom refuse, such as empty cleaning fluid containers. Claimant was concerned that the bins posed a hazard to her and her pregnancy. Claimant learned that another employee had made a complaint about the bins and other matters to the Occupational Health and Safety Administration (OSHA) and that the complaint was pending, which made claimant feel that personally making a complaint to the employer was unnecessary.

(5) Claimant did not complain to her supervisor or others in authority about the employer’s disclosure of her pregnancy to others in the office, the policy against subordinates socializing with claimant, or the bathroom bins. Claimant declined to make the complaints because she felt it was “uncomfortable” to have such conversations with her direct supervisor, and that other company management was “somebody in Japan” who spoke only Japanese and there was not “an English-speaking person to have a conversation with.” Transcript at 11-12.

(6) At some point in early February 2024, claimant’s supervisor observed claimant reading a book on a personal electronic device rather than performing work. The staffing agency that placed claimant regularly solicited feedback from claimant’s supervisor about her performance. The supervisor reported that claimant was “lazy” and “not performing well” based, in part, on the observation of claimant reading a book. Transcript at 10, 14.

(7) In the afternoon of February 8, 2024, the staffing company relayed the supervisor’s comments to claimant regarding her performance. Claimant disagreed with her supervisor’s evaluation and felt that it was unfair because she would get unclear instructions from the supervisor and “have nothing to do.” Transcript at 14. During the conversation, claimant asked to be placed with a different employer, but the staffing agency declined. Claimant did not discuss this evaluation with her supervisor. Instead, claimant drafted and submitted a resignation to the employer with immediate effect. Claimant did not work for the employer after that day.

CONCLUSIONS AND REASONS: Claimant voluntarily 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 when she did primarily because she disagreed with her supervisor’s evaluation of her work. While claimant testified regarding other points of dissatisfaction

with her job, including the employer's handling of the news that claimant was pregnant, the policy against subordinates socializing with claimant, and the presence of bathroom bins, the timing of claimant's resignation suggests that it was proximately caused by learning of her supervisor's comments, rather than the other long-standing concerns. Nevertheless, the reasons for quitting cited by claimant at hearing, either individually or in combination, did not present a situation of such gravity that claimant had no reasonable alternative but to quit work.

Claimant's disagreement with her supervisor's report to the staffing agency that she was "lazy," while understandably upsetting to claimant, was not a grave situation. The record does not suggest that claimant was in danger of being discharged due to the supervisor's criticism. Instead of quitting work, a reasonable and prudent person in that situation likely would have approached their supervisor to clarify how they could improve their performance and change the employer's opinion of their work. Claimant hearing of her supervisor's negative impression of her under these circumstances was not a grave situation.

Similarly, while claimant believed that her supervisor's disclosure to other employees of her pregnancy was inappropriate, the record does not show that the employer was aware that claimant intended the disclosure of her pregnancy to be in confidence or that the disclosure constituted a grave situation at the time claimant quit work. Additionally, claimant did not face a grave situation because of the need to climb stairs to get to her office as she did not assert that she had any problem doing so as of the day she quit work. The employer's failure to offer accommodations that had not been requested and that claimant might not have needed for several months did not constitute a grave situation.

Further, while claimant deemed "unreasonable" the employer's policy that claimant's co-workers were not permitted to socialize with her due to claimant's role in the human resources department was not outside the realm of expectations that employers have the right to expect of their employees holding such positions. It can be inferred that the policy was instituted to maintain the independence and impartiality of an employee handling personnel matters, and that it posed only a minor inconvenience to claimant. Therefore, this did not constitute a grave situation.

The record also suggests that the bathroom bins were unlikely to pose a hazard to employees with limited exposure to them, such as claimant, and that claimant's concern that they posed a hazard likely would have been resolved by inquiring of the employer as to the bins' contents and purpose. Claimant's supervisor testified that these bins were essentially ordinary bathroom trashcans that might sometimes contain, among other things, empty cleaning fluid containers. Transcript at 20. It can reasonably be inferred that these bins, more likely than not, posed no more hazard to claimant than other objects she encountered in the workplace and elsewhere in her daily life. Therefore, the presence of these bins did not constitute a grave situation.

Moreover, even if claimant had faced a grave situation due to one or more of these issues, claimant has not shown that she had no reasonable alternative but to quit work. Each of the points of job dissatisfaction claimant identified would, more likely than not, have been resolved to some degree through an explanation or other action by the employer, had she made the employer aware of the issues and requested specific remedies prior to quitting. That initiating such conversations with her supervisor might have been "uncomfortable" did not mean that the conversations were likely to be futile. Therefore, claimant had the reasonable alternative of speaking to the employer about each of her

concerns. Because none of the above constituted situations of such gravity that claimant had no reasonable alternative but to quit, claimant quit work without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 4, 2024.

DECISION: Order No. 24-UI-252324 is affirmed.

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

DATE of Service: June 3, 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 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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