

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0484

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 21, 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 December 17, 2023 (decision # L0003164359).¹ Claimant filed a timely request for hearing. On May 15, 2024, ALJ Contreras conducted a hearing at which the employer failed to appear, and on May 16, 2024, issued Order No. 24-UI-254416, affirming decision # L0003164359.² On June 1, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Hut American Group, LLC employed claimant as a pizza delivery driver at one of their Pizza Hut locations from December 2022 until December 21, 2023.

(2) In or around early June 2023, one of claimant’s coworkers was “thrown into having to take over the role of assistant manager” of claimant’s location. Transcript at 10. The new assistant manager was unhappy with his assignment, as it afforded him less opportunity to earn tips from driving deliveries. As a result, he took out his frustration on claimant. This took the form of aggressive physical posturing,

¹ Decision # L0003164359 stated that claimant was disqualified from receiving benefits effective December 21, 2023. However, as disqualifications begin on the Sunday of the week in which they are effective, and December 21, 2023, was a Thursday, this date is presumed to be scrivener’s error.

² The order under review concluded that claimant was disqualified from receiving benefits effective December 17, 2024. Order No. 24-UI-254416 at 3. This date is presumed to be scrivener’s error, and the order is treated as having meant to state December 17, 2023, as the disqualification date.

such as sticking his finger in claimant's face; and calling claimant a "maricón," a Spanish slang word that roughly translates to "sissy" in English. Transcript at 19. Claimant is gay, and understood the assistant manager to be using the word "maricón" as a slur against him.

(3) On or around June 9, 2023, after some confusion over what work had been completed, the assistant manager "got in [claimant's] face with a rage... and said, 'I'm going to whoop you.'" Transcript at 14. After this incident, claimant attempted to call the store's general manager, who did not answer his phone. Claimant also texted the general manager an account of what had occurred and requested that he "chill [the assistant manager] out," but the manager did not respond. Transcript at 14. The following day, claimant spoke to the general manager in person about the incident, but the manager did not believe claimant's story, and took no action.

(4) On June 24, 2023, claimant was performing closing duties, and had placed his own food in one of the store's ovens to keep it warm. While claimant's food was in the oven, the assistant manager approached claimant and aggressively told him, "Don't make a mess because we've already cleaned [the oven]." Transcript at 18. During the encounter, the assistant manager got "closer to [claimant's] face" than he had during the previous incident earlier that month. Transcript at 18–19. The manager also again called claimant a "maricón" during the encounter. Transcript at 19. After this incident, claimant again attempted to contact the general manager by phone and text message, but received no response. The next day, claimant again spoke to the general manager in person about the incident, but the general manager again did not believe claimant's story, and took no action.

(5) After the June 24, 2023, incident and the general manager's lack of response to claimant's concerns, claimant advised the general manager that he intended to "go above [his] head" and contact the district manager about his concerns. Claimant did so, and the district manager took claimant's concerns seriously, offering to transfer or discharge the assistant manager. Claimant did not wish for the district manager to take drastic action, though, and asked him to speak to the assistant manager instead, which the district manager did. After the district manager spoke to the assistant manager, the assistant manager initially stopped antagonizing claimant, but resumed the behavior approximately a month later. Claimant also believed that the general manager began retaliating against him because he had spoken to the district manager about his concerns with the store's management.

(6) Around the same time that the assistant manager resumed antagonizing claimant, another assistant manager was also hired for the store. Claimant felt that the first assistant manager was "influencing" the second manager to treat claimant with hostility. Transcript at 23.

(7) The ongoing hostility that claimant experienced from the two assistant managers, as well as the general manager's refusal to intervene and generally hostile demeanor towards claimant, caused claimant to experience depression and anxiety. These symptoms were heightened while claimant was interacting with the managers. Claimant considered attempting to transfer to another store, but was unable to contact the manager of that store. Claimant ultimately decided to continue working for the employer while attempting to avoid conflict.

(8) Claimant's driver's license was suspended for approximately a week in December 2023. As a result, claimant was unable to work during that period of time until he obtained an SR-22 certificate that would allow him to legally drive again. While claimant was off of work, he continued to experience depression

and anxiety related to work and sought advice from his physician. During the exam, claimant's physician noticed that claimant's heart rate tended to elevate when he spoke about work. The physician recommended that claimant find another job due to the stress he was experiencing at work and the effects that stress had on claimant's health.

(9) On December 21, 2023, claimant had obtained his SR-22 certificate and was ready to return to work. On his way to the employer's store, claimant stopped at a convenience store next to the employer's store. The brother of the newer assistant manager worked at the convenience store, and during conversation mentioned to claimant that his sister (the newer assistant manager) had told him about claimant's license suspension. Claimant was upset that the assistant manager had violated his privacy. Claimant texted the general manager with his concerns about the violation of privacy, but the general manager did not respond to claimant's concerns.

(10) Afterwards on December 21, 2023, claimant visited the employer's store to submit to the general manager proof that he was able to drive again. During his meeting with the general manager, the general manager told claimant that claimant was not on the schedule, and curtly asked claimant when he could start again. Claimant perceived the general manager's tone and demeanor as hostile, which caused claimant significant anxiety. Not wishing to endure further anxiety-causing interactions, claimant told the general manager that he was quitting effective immediately. Claimant decided to quit due to the ongoing hostility he experienced from the general manager and assistant managers, including the disclosure of claimant's personal information to a non-employee, and the depression and anxiety that resulted from interacting with them.

CONCLUSIONS AND REASONS: Claimant 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 quit work due to a pattern of hostility directed at him by the store's general manager and two assistant managers. This hostility included threats of physical violence and derogatory language based on claimant's sexuality, and caused claimant to experience stress, depression, and anxiety. Claimant's physician advised claimant to find another job based on the effects that the stress and related symptoms had been having on claimant's health. The order under review correctly concluded that these circumstances were grave. Order No. 24-UI-254416 at 3. However, the order under review nevertheless concluded that claimant quit work without good cause because he failed to seek reasonable alternatives to quitting such as contacting the district manager with his concerns again or transferring to another store. Order No. 24-UI-254416 at 3. The record does not support the conclusion that either of these actions would have constituted reasonable alternatives to quitting.

Regarding the suggestion that claimant could have sought further intervention from the district manager, the record does show that the district manager initially took claimant's concerns seriously and appeared willing to act after claimant spoke with him in or around June 2023. Despite the initially promising results of speaking with the district manager, however, the first assistant manager resumed his antagonistic behavior about a month later. There is no indication in the record that the district manager ever followed up on the situation to ensure that the assistant manager's good behavior continued. Further, the record shows that what appears to be the store's entire leadership team—the general manager and two assistant managers—either actively engaged in antagonistic behavior towards claimant or regularly tolerated it. Even if the district manager was initially willing to intervene to stop the first assistant manager's behavior, more likely than not, he would not have been willing to replace or otherwise effectively discipline the entire store's management team. Given the above, further attempts to address the issue with the district manager would likely have been futile, and not a reasonable alternative to quitting.

Regarding the suggestion that claimant could have transferred to another store instead of quitting, although claimant did not appear to have made a comprehensive effort to obtain a transfer, the record does not show that any such transfer was actually *available* to claimant at the time that he quit. For a course of action to be considered a reasonable alternative to quitting, the record must show that such course of action was actually available to the individual. *See Fisher v. Employment Dept.*, 911 P.2d 975, 139 Or.App. 320 (Or. App. 1996). Because the record does not so show, seeking a transfer to another store would not have been a reasonable alternative to quitting.

Because claimant did not have any reasonable alternatives to quitting, claimant quit work with good cause. Therefore, claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-254416 is set aside, as outlined above.

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

DATE of Service: July 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.

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.surveymzmo.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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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