EO: Intrastate
BYE: 08-Mar-2025

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

283
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0492

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 26, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0003845004). The employer filed a timely request for hearing. On May 28 and 29, 2024, ALJ Chiller conducted a hearing, and on May 31, 2024, issued Order No. 24-UI-255505, reversing decision # L0003845004 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective January 28, 2024. On June 5, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) 3 Rivers Josephine County School District employed claimant as a custodian from August 15, 2022, until February 1, 2024. Claimant worked an evening shift, from 1:30 p.m. to 9:30 p.m., at a school in the employer's district.

(2) The employer's policies permitted employees to transfer to another open position with the same job classification and title without a formal application or interview, so long as no other employees expressed interest in the same position. If another employee expressed interest in such a position, all interested employees would be required to interview for the position. Employees who wished to move into a position with a different job classification or title were required to formally apply and interview for the position.

(3) Claimant last performed work for the employer on August 21, 2023. Thereafter, claimant began an approved medical leave that was initially intended to last until November 20, 2023. Claimant's medical leave was extended several times, and was ultimately approved to continue through February 22, 2024. Claimant exhausted her balance of paid time off (PTO) during her medical leave. Due to the way that the employer allocated PTO, claimant also used PTO that she had not yet accrued, ultimately resulting in a payment of nearly $3,000 of PTO benefits that claimant had not yet accrued.

(4) At some point during her employment, one of claimant's coworkers sexually harassed her. The same coworker also engaged in "anger outbursts" around claimant which, along with the harassment, made claimant "very uncomfortable working with him." May 29, 2024, Transcript at 29. Claimant submitted a complaint to the employer, which alleged as much. In December 2023, the employer conducted an investigatory interview with claimant about the matter. In January 2024, the employer notified claimant that her allegations of sexual harassment were unsubstantiated. Because the employer did not substantiate claimant's allegations, they took no action to discipline or reassign the harasser.

(5) After learning that the employer found her abuse allegations unsubstantiated, claimant determined that she did not want to return to work with the harasser. On claimant's behalf, claimant's union representative requested that claimant be assigned to a different shift so that claimant would not have to work with her harasser. The employer offered to allow claimant to work a later shift, from 3 p.m. to midnight, and split between her original school and another school in the district. This arrangement would have kept claimant from working with her harasser, who only worked at claimant's original school. However, claimant had an eight-year-old son, and claimant's husband worked a shift beginning at midnight. Had claimant accepted the later shift, her son would have been home alone without childcare late at night. As such, claimant was unable to work this shift, and did not accept it. The employer had no other shifts available for claimant.

(6) Also in January 2024, the employer issued claimant a memorandum which outlined the approximately $3,000 she had been overpaid in PTO benefits. Around that time, claimant spoke to the employer's payroll department, who advised claimant that she would be required to repay the overpaid PTO benefits. Claimant also consulted with her union representative about the matter, who told claimant the same thing. Claimant was concerned that she would be unable to repay the overpaid PTO benefits.

(7) Because she was unable to work the later shift the employer had proposed, did not wish to work with her harasser, and was concerned about her ability to repay the overpaid PTO benefits, claimant decided to quit. Claimant's union representative negotiated a severance agreement on claimant's behalf, which included a provision that the employer would waive claimant's repayment of the overpaid PTO benefits. On February 1, 2024, claimant executed the agreement and voluntarily quit work.

(8) Prior to quitting, claimant did not apply for other positions within the school district or request a transfer to the same position at a different school.

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)(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 voluntarily quit work due to a combination of her concerns about repaying the overpaid PTO benefits, not wishing to continue working with her harasser, and lacking childcare that would allow her to take a later shift and avoid her harasser. As a preliminary matter, there is some conflict in the record as to whether, when, and by what means claimant would have had to repay the overpaid PTO benefits if she had returned to work from her medical leave instead of quitting. Claimant explained that both the employer's payroll department and her union representative told her that she would have to repay the overpaid benefits. May 29, 2024, Transcript at 11. By contrast, the employer's witness, the employer's human resources director, testified that claimant had never been asked to repay the overpaid benefits, and that repayment was "not something that would be consistent with what [the employer has] done in the past." May 28, 2024, Transcript at 32–33. Even assuming that claimant's account is correct and the employer would have required repayment had she not quit, the order under review correctly concluded that such a requirement did not constitute a grave reason for quitting because claimant would have accrued the benefits as she continued to work. Order No. 24-UI-255505 at 3. Nevertheless, the record shows that claimant's other reasons for quitting constituted good cause.

To the extent that claimant voluntarily quit work to avoid returning to work with her harasser, claimant faced a grave situation. Note that while the employer's investigation into claimant's complaint did not result in substantiation of claimant's allegations, the employer offered no evidence to show that the employee in question did not harass claimant or otherwise make her uncomfortable in the manner she described. As such, claimant's assertions at hearing that the employee had made her uncomfortable by sexually harassing her and engaging in angry outbursts are taken as true, and the facts have been found accordingly. No reasonable and prudent person would continue working for an employer for an additional period of time if it meant submitting themselves to such abuse, particularly when the employer has refused to take action against the perpetrator. As such, claimant quit for a grave reason.

Further, claimant had no reasonable alternatives but to quit. The employer's proffered alternative, negotiated by claimant's union representative, would have required claimant to work a later shift in order to avoid the harasser. Claimant was unable to do so because it would have left her eight-year-old son without childcare late at night. As such, accepting this shift would not have been a reasonable alternative to quitting. The order under review suggested that transferring to another position to avoid working with the harasser would have been a reasonable alternative to quitting. Order No. 24-UI-255505 at 4. The record does not support this conclusion.

Per the employer's policies, transferring to another position could have taken one of two routes: claimant could have moved into another position without a formal application process if it was of the same job classification and title, or she could have formally applied for a position with a different classification. Had the former option been available to claimant, it may have been a reasonable alternative to quitting. However, the record does not show that such a transfer was actually available to claimant at or around the time she quit. Further, the record suggests that such a transfer was *not* available to claimant at that time. After determining that claimant's complaint of harassment was not substantiated, the employer offered to allow claimant to split a later shift between her original school and another school, which would have allowed claimant to avoid working with the harasser. Logic would dictate that, had the employer found another position for claimant to wholly transfer into at another school (including the second school that they proposed she work at) rather than requiring her to split her time between two separate schools, they would have offered to allow her to do so. The fact that the employer instead offered only this one arrangement suggests that no other positions were open for

claimant to transfer into at the time. 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 show that transferring to another school, with a shift that would not require claimant to leave her child unattended late at night, was actually available to claimant, this would not have been a reasonable alternative to quitting.

Likewise, applying for a position with a different classification would not have been a reasonable alternative to quitting. First, the record contains no information regarding either what positions were open to claimant at the time or whether claimant was qualified for any of those positions. Further, claimant testified at hearing that doing so is "kind of a long process." May 29, 2024, Transcript at 15. The employer did not rebut this assertion. Although the record does not show how long the application and interview process typically takes, it can be inferred that the process is not instantaneous. Moreover, it cannot be assumed that claimant would be hired for the first open position to which she applied. Therefore, it stands to reason that claimant could have waited a period of time of months, if not longer, to be hired for a position of a different classification elsewhere within the district. During this time, and once her medical leave had expired, claimant would have been required to continue working with her harasser. This would not have constituted a reasonable alternative to quitting. *See Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep't.*, 256 Or App 682, 303 P3d 957 (2013).

Because the requirement to continue working with her harasser was a grave situation, and because no reasonable alternatives to that situation were available to claimant, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-255505 is set aside, as outlined above.

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

DATE of Service: <u>July 12, 2024</u>

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.surveygizmo.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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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