

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0540

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 18, 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 unemployment insurance benefits effective January 28, 2024 (decision # L0003723212). Claimant filed a timely request for hearing. On July 1, 2024, ALJ Goodrich conducted a hearing, and on July 9, 2024, issued Order No. 24-UI-258429, affirming decision # L0003723212. On July 16, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kien Company, doing business as The Original Pancake House, employed claimant from October 9, 2023, until February 2, 2024.

(2) Claimant worked as a server for the employer at their Redmond, Oregon restaurant. Claimant worked with an assistant manager and another server, among other employees. The assistant manager oversaw creating the work schedule, and circulated the schedule each week to the restaurant's employees via a group text. The other server filled in as a shift supervisor when the assistant manager was away. However, the other server did not have authority to discharge employees.

(3) Claimant typically worked shifts from 7:00 a.m. to 2:00 p.m. Claimant had noticed that the employer had scheduled her for fewer shifts and believed that by late January 2023 "they had docked [her] hours down to . . . one shift per week." Transcript at 10. Claimant also thought that during her shifts, she was being assigned to serve tables in the least desirable section of the restaurant, and that the other server had been angry with her for the few weeks leading up to January 27, 2024.

(4) On Friday, January 26, 2024, claimant was scheduled to work but did not report for her scheduled shift.

(5) On Saturday, January 27, 2024, claimant worked a 7:00 a.m. to 2:00 p.m. shift. The other server was present that day, and because the assistant manager was away, the other server exercised some

supervisory authority. At the conclusion of claimant's shift that day, claimant had to leave so that she could drive her son to an appointment. Claimant clocked out at 2:00 p.m. and was preparing to leave when the other server told claimant that she would have to do some additional "side work," such as cleaning tables and chopping vegetables. Transcript at 12. Claimant had already completed her assigned side work for the shift and told the other server that she had to leave at 2:00 p.m. and could not do more side work. The other server told claimant that if she left without doing the side work, claimant was "going to be fired." Transcript at 9, 13. Claimant told the server that that was not fair, but the other server just walked away from her. Claimant left the restaurant without completing the additional side work and drove her son to his appointment as planned.

(6) On Sunday, January 28, 2024, the assistant manager sent the work schedule for that week to the employer's employees, including claimant, via a group text. Claimant was scheduled to work on Friday, February 2, 2024, and Saturday, February 3, 2024. After receiving the work schedule on January 28, 2024, claimant texted the assistant manager and requested a copy of her W-2 tax form because she had misplaced her original copy. On Monday, January 29, 2024, claimant sent another text requesting a copy of her W-2 tax form.

(7) On Tuesday, January 30, 2024, the assistant manager sent claimant a text inquiring how claimant would like the copy of her W-2 form to be sent to her. The same day, claimant responded, "I can just pick it up next time I work on Friday." Transcript at 55.

(8) On Friday, February 2, 2024, claimant did not report for her scheduled shift. The assistant manager texted her that day, "No call/no show again." Transcript at 34. Claimant replied, "[the other server] fired me last Saturday." Transcript at 34. The assistant manager then texted, "[t]hat is not what happened. Also, then why did you tell me last Tuesday you would pick up your W-2 copy when you work on Friday which is today?" Transcript at 34. Claimant replied, "[s]he told me I was fired." Transcript at 34. The assistant manager then texted, "[s]he doesn't have the authority to do so and 100% knows that. Again, you told me on Tuesday that you would pick up your W-2 on Friday when you work. So why would you think you are working if she fired you? Also I sent out a schedule on Sunday the day after you say she fired you and you were scheduled." Transcript at 34.

(9) Claimant did not respond any further to the assistant manager's texts. Claimant failed to report for her scheduled shift on February 3, 2024, and never worked for the employer again. When claimant stopped responding to the assistant manager texts and failed to report to work on February 3, 2024, the employer considered claimant to have quit. On February 4, 2024, the assistant manager texted claimant that her final paycheck and a copy of her W-2 were ready to be picked up. On February 7, 2024, claimant texted the assistant manager back requesting the items be mailed to her. Claimant ultimately received her final paycheck and a copy of her W-2 by mail.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of the Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The nature of the work separation was a voluntary leaving that occurred on February 2, 2024. At hearing, claimant maintained that she did not quit working for the employer. Transcript at 8-9. Claimant acknowledged that no one ever told her she had been discharged and that she “just assumed” the other server followed through with discharging her when claimant left the restaurant without doing the additional side work on Saturday, January 27, 2024. Transcript at 22, 24. Claimant’s assertion that the other server discharged her is undercut by the fact that on Sunday, January 28, 2024, claimant received her work schedule, which indicated that claimant was scheduled to work on Friday, February 2, 2024, and Saturday, February 3, 2024. Further, claimant’s assertion that she believed she had been discharged as of January 27, 2024, is not persuasive because, on Tuesday January 30, 2024, claimant sent a text to the assistant manager stating that she could pick up a copy of her W-2 form the “next time I work on Friday.” Transcript at 55. This statement shows that claimant was aware that she was still employed by the employer, and that she was scheduled to work on Friday February 2, 2024.

On that date, claimant did not report for work. Claimant’s absence that day led the assistant manager to engage in a text exchange with claimant in which claimant maintained she had been fired, and in which the assistant manager explained that that did not make sense given that the employer had scheduled claimant to work on February 2 and February 3, 2024, and that claimant had previously acknowledged by text that she was scheduled to work on February 2, 2024. The assistant manager credibly testified at hearing that the texts she sent claimant on February 2, 2024, were not intended to express that continuing work would no longer be available to claimant, but rather amounted to “essentially wondering if [claimant] was quitting or if [the assistant manager] should continue to put [claimant] on the schedule.” Transcript at 38-39. Accordingly, the weight of the evidence shows that upon failing to report to her scheduled shift on February 2, 2024, despite previously having acknowledged that she was scheduled to work that day, claimant became unwilling to continue to work for the employer for an additional period of time. The work separation was therefore a voluntary leaving that occurred on February 2, 2024.

Voluntary Leaving. 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). “[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. A claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e).

Because claimant maintained at hearing that she had not quit working for the employer, she did not explain a reason why she quit. However, the record fails claimant sincerely believed that she had been discharged, or that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have believed she had. Claimant acknowledged that no one ever told her she had been discharged and that she “just assumed” the other server followed through with discharging her when claimant left the restaurant without doing the additional side work on Saturday, January 27, 2024.

Transcript at 22, 24. Furthermore, that claimant believed she had been discharged as of January 27, 2024, is not persuasive because, on Tuesday, January 30, 2024, claimant sent a text to the assistant manager demonstrating that claimant was aware that she was still employed by the employer and scheduled to work on Friday February 2, 2024, which was confirmed by the assistant manager’s texts on February 2, 2024.

Claimant testified at hearing that she believed that by late January 2023, the employer “had docked [her] hours down to . . . one shift per week,” that the employer would assign her to serve tables in the least desirable section of the restaurant, and that the other server had been angry with her for the few weeks leading up to January 27, 2024. Transcript at 10, 18. Claimant posited that based on the foregoing, it “seemed like [the employer] w[as] trying to push me out is what it felt like[.]” Transcript at 19.

However, the record does not show that claimant was receiving only one shift per week as of her February 2, 2024, work separation date. The record shows that for the week of January 21, 2024, through January 27, 2024, claimant was scheduled for two shifts—one on January 26, 2024 and the other on January 27, 2024—but that claimant failed to report to the January 26, 2024 shift. The record likewise shows that for the week of January 28, 2024, through February 3, 2024, claimant was scheduled for two shifts—one on February 2, 2024 and the other on February 3, 2024—but that claimant quit working for the employer on February 2, 2024. To the extent claimant nevertheless quit because of a reduction in hours, she failed to establish that she quit with good cause under OAR 471-030-0038(5)(e) because she failed to show that continuing to work for the employer substantially interfered with a search for full time work, or that the cost of working for the employer exceeded the amount of remuneration she received.

To the extent claimant quit working because she believed she was being assigned to serve tables in an undesirable section of the restaurant, claimant did not establish that her situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work if there was no reasonable alternative. Nor did she show that she had no reasonable alternative but to quit, because she could have pursued the reasonable alternatives of asking for more hours or reassignment to a more desirable section of the restaurant.

For the above reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 28, 2024.

DECISION: Order No. 24-UI-258429 is affirmed.

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

DATE of Service: August 2, 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

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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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