

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0557

Reversed
Disqualification

PROCEDURAL HISTORY: On February 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective November 26, 2023 (decision # 142615). Claimant filed a timely request for hearing. On June 24, 2024, ALJ Strauch conducted a hearing, and on July 1, 2024, issued Order No. 24-UI-257771, reversing decision # 142615 by concluding that claimant voluntarily quit with good cause, and therefore was not disqualified from receiving benefits based on the work separation. On July 22, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Outlaw Powder Coating & Fabrication, LLC employed claimant from August 2023 until November 27, 2023.

(2) During his tenure with the employer, claimant felt that the owner of the business regularly used foul and demeaning language when speaking to him and other employees, which made claimant not want to go to work.

(3) In or around the second week of November 2023, claimant was driving his son to school before work when the heater core in claimant's vehicle broke, essentially disabling the vehicle. Claimant contacted the owner to let him know that he would be delayed in getting to work as a result. The owner told claimant to "get here when you can or let me know if you're not going to make it." Transcript at 21.

(4) On November 22, 2023, claimant worked his final shift for the employer. The employer's operations were closed for the Thanksgiving break from November 23, 2023, through November 26, 2023, and claimant was next scheduled to work on November 27, 2023, the Monday after the Thanksgiving break.

On November 27, 2023, claimant failed to report for work without contacting the employer and did not work for the employer again. Claimant did so because he had decided to quit because of the owner's response to claimant's call about his vehicle breaking down and, more generally, because he felt the owner had mistreated him by using foul and demeaning language.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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 voluntarily quit work due to, essentially, allegations that the owner verbally abused him, including a response to claimant's call about his vehicle having broken down. The parties' accounts on this point diverged significantly. At hearing, claimant asserted, for instance, that while the owner of the business was "a very nice guy," he was also "very degrading," and "speaks to employees and treats them like they're dirt." Transcript at 9–10. The owner, by contrast, flatly denied claimant's allegations. Transcript at 21. Similarly, the parties differed as to their accounts of when the incident involving claimant's vehicle breakdown occurred. At hearing, claimant testified that the incident occurred on the morning of November 27, 2023, and that the owner's response to claimant notifying him of the issue was to simply tell claimant, "Get here." Transcript at 8. The owner asserted, however, that the incident occurred prior to Thanksgiving; that claimant had similar vehicle problems in the past; that he told claimant to "get here when you can or let me know if you're not going to make it"; and that on November 27, 2023, claimant simply failed to show for work, without contact between the two. Transcript at 21, 23.

The order under review resolved these conflicts in the testimony by assigning more weight to claimant's testimony and finding facts accordingly, explaining that the owner's testimony was "internally inconsistent" because the owner first testified that the vehicle breakdown incident occurred on November 27, 2023, but later testified that the incident had occurred prior to Thanksgiving. Order No. 24-UI-257771 at 3. However, the record does not show that the employer's account was internally inconsistent. At hearing, claimant testified first, and offered his account which indicated that the incident in question had occurred on November 27, 2023. At the beginning of the employer's testimony, the owner initially testified that claimant "just never showed up back to work." Transcript at 20. Next, the ALJ asked the owner if he had had a phone call with claimant on the morning of November 27, 2023, and the owner responded, "I think around 11:00 or 10:30." Transcript at 20–21. The owner did not independently identify the call as having taken place on November 27, 2023. Later, the owner corrected his testimony by explaining that the incident with the vehicle, and the related phone call, had actually occurred prior to Thanksgiving. Transcript at 23. That the employer *corrected* his testimony, apparently after having time to better recall the events in question, does not show that the testimony was internally inconsistent. Thus, the parties' accounts of the events in question were equally balanced. Because

claimant bears the burden of proof in this case, claimant has not shown, by a preponderance of the evidence, that his account of these events is more accurate. As such, where the accounts of the parties differ, the facts have been found in accordance with the employer's account.

The events as described by the employer do not support a finding that claimant faced a grave situation that led him to quit, as the owner denied claimant's allegations of abusive behavior. Even if the facts were found in accordance with claimant's testimony, however, claimant would still fail to meet his burden to show that he quit for a reason of such gravity that he had no reasonable alternative but to quit. Even assuming, for instance, that the owner *did* verbally abuse claimant as claimant had described creating a grave situation, the record suggests that speaking to the owner about the behavior would have been a reasonable alternative to quitting. Claimant did not testify that he had ever attempted as much. However, claimant did testify that the owner has "a good heart, but he speaks to employees and treats them like dirt." Transcript at 10. Claimant further testified he did not believe the owner knew how his communication impacted others and that if he did know "he'd quit (phonetic) doing it." Transcript at 14. This suggests that if the owner had been aware of the effect that his alleged behavior had on claimant, he might have been willing to modify his behavior. Therefore, to the extent that claimant quit because of the owner's alleged verbal abuse of claimant, claimant failed to pursue reasonable alternatives to quitting and therefore quit without good cause.

To the extent that claimant quit specifically due to the owner's response to claimant's phone call about his disabled vehicle, claimant has also failed to meet his burden to show that he had good cause to quit. Even assuming that claimant's version of events is accurate, that account does not depict grave circumstances based on the owner's response to him. Claimant essentially testified that the owner curtly told claimant, in response to the news that claimant's vehicle was disabled, to "get here." Transcript at 8. While such a response might be considered rude, or indicate a lack of concern, a reasonable and prudent person would not quit their job simply because their employer was rude to them or unconcerned about their personal difficulties. Therefore, this did not constitute circumstances of such gravity that claimant had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause, and therefore is disqualified from receiving unemployment insurance benefits effective November 26, 2023.

DECISION: Order No. 24-UI-257771 is set aside, as outlined above.

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

DATE of Service: August 14, 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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