EO: Intrastate
BYE: 17-May-2025

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

274
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0614

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 11, 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 May 19, 2024 (decision # L0004464473). Claimant filed a timely request for hearing. On August 7, 2024, ALJ Buckley conducted a hearing, and on August 8, 2024, issued Order No. 24-UI-261913, affirming decision # L0004464473. On August 26, 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 claimant did not include a statement declaring 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).

FINDINGS OF FACT: (1) TWGW, Inc. employed claimant as an auto parts delivery driver at one of their retail stores from December 15, 2021, until May 21, 2024.

(2) Claimant generally worked full-time. However, during some months, the employer reduced claimant's and other employees' schedules by 2.5 hours per week to correspond with slowing business during those months.

(3) In October 2023, a new store manager was hired and became claimant's direct supervisor. A regional manage oversaw the store manager. Claimant and the store manager were frequently in conflict thereafter for various reasons.

(4) Claimant had difficulty performing some work tasks that required greater levels of physical exertion or working at a fast pace, which he attributed to his age. Claimant, who was 60 years old, believed that the store manager expected too much of him given his age and abilities. At some point, claimant complained about the store manager to the regional manager After that, claimant felt that his relationship with the store manager "just went downhill" because, claimant assumed, the store manager considered him "a snitch, or trouble[.]" Transcript at 12.

(5) Other employees told claimant that they heard on occasion that the regional manager and the store manager were plotting to find cause to discharge claimant, which claimant believed. They also told claimant that they heard the store manager say, "I'm glad [claimant's] not working out front with the customers because he don't have any teeth and that's an embarrassment[.]" Transcript at 16-17. Claimant considered this to be "harassment or discrimination." Transcript at 15.

(6) On May 16, 2024, claimant believed that the store manager intended to hire a new employee at the store who would be scheduled for 8 hours per day, and that a different employee had been secretly clocking in an extra 30 minutes per day despite the universal reduction in hours. This upset claimant because he was only allowed to work 7.5 hours per day at the time. Claimant "confronted [the store manager] in front of everybody" and the store manager "took offense to it." Transcript at 42. Claimant was not offered additional hours.

(7) On May 17, 2024, the store manager presented claimant with a performance improvement plan (PIP). The PIP identified the store manager's points of dissatisfaction with claimant's work, including "errors that he was making, standing around and waiting for deliveries, that he doesn't find things to do and doesn't take. . . other duties as assigned, excessive smoke breaks and disappearing often during his shift, so overall low productivity." Transcript at 28. Despite this dissatisfaction with claimant's work, the store manager and the regional manager did not plan to discharge claimant at that time, instead giving him an opportunity to improve his performance.

(8) At 4:20 p.m. on May 17, 2024, claimant was expected to deliver a part to a customer prior to the 5:00 p.m. end of claimant's shift. Claimant left on other deliveries, overlooking the item, and returned to the store at 4:52 p.m. Another employee therefore had to deliver the part when the customer complained that it had not been delivered on time. Claimant "was afraid [he] was gonna get fired for not taking the product." Transcript at 19.

(9) On May 21, 2024, another employee approached claimant at work and told him that he heard that the regional manager had watched surveillance video and was "thinking about. . . terminating [claimant] because this product wasn't taken in time on [May 17, 2024]." Upon hearing this, claimant "just lost it" and told the employer he was quitting with immediate effect and left the store. Transcript at 20. Claimant did not work for the employer thereafter. The employer had not intended to discharge claimant that day.

(10) After hearing of claimant's resignation, the employer's human resources manager called claimant to discuss the matter. Claimant had previously worked with this manager to resolve issues and had a good relationship with her, but claimant had not told her about his complaints against the store manager or the regional manager because he felt embarrassed and that she was too busy. During the conversation, claimant reported the store manager's remark about claimant's dental problems, and that his co-workers told him that the store manager and the regional manager had said they wanted to discharge him. The human resources manager responded that she believed that the other managers had acted unprofessionally if they had made the statements attributed to them and that the employer would have investigated and taken appropriate action had claimant complained to her rather than quitting.

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 work when he did primarily because he believed that the employer was going to discharge him for not timely delivering a part on May 17, 2024. This belief was founded on other points of job dissatisfaction, including a reduction in work hours, unprofessional and offensive conduct by his superiors, and being placed on a PIP hours before the delivery incident occurred.

A claimant has good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects. *McDowell v. Employment Dep't*., 348 Or 605, 236 P3d 722 (2010). The parties offered differing accounts of the May 17, 2024, incident and who was at fault for the part not being timely delivered. However, even if claimant were at fault for overlooking the part that needed to be delivered, it was a matter of ordinary negligence. Therefore, if claimant had been discharged for the incident, it would, more likely than not, not have been for misconduct.[1] However, the human resources manager testified that the employer, including the store manager and the regional manager, had no plans to discharge claimant at that time, for that incident or any other reason. In rebuttal, claimant offered the hearsay account of an anonymous co-worker that heard that the regional manager was considering discharging claimant because of the undelivered part. In weighing this conflicting evidence, claimant has not shown that, more likely than not, the employer intended to discharge him imminently. Further, claimant did not cite concerns over inability to secure other work had he been discharged as a motivation for quitting, and the record does not show that such an inability would necessarily have resulted. Therefore, the record does not show that such a discharge would have been the "kiss of death" to his career. Accordingly, claimant has not shown that he faced a grave situation due to an impending discharge.

To the extent that claimant quit due to the reduction in hours, this also did not constitute good cause for quitting work. 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). Both parties testified that the reduction in hours amounted to 30 minutes per workday, or 2.5 hours per 40-hour workweek, and had occurred periodically throughout claimant's employment as dictated by business conditions. Transcript at 8-9, 34. The record does not suggest that claimant sought other full-time work when his hours were reduced, and it can reasonably be inferred that claimant's remuneration, even with a 6.25% reduction as compared to that earned for full-time work, remained above the cost of earning that remuneration. Therefore, under OAR 471-030-0038(5)(e), the reduction in hours did not constitute good cause for leaving work.

[1] "An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a).

Claimant also asserted that the reduction in hours was discriminatory because one of several other employees was secretly clocking in an extra 30 minutes per day. Transcript at 10. The employer's witness testified, however, that they were unaware of this. Transcript at 34-35. And, to the extent the employer intended to offer a new hire 40 hours per week, it is no more likely than not that the employer had a valid business reason for doing so that did not constitute discrimination against claimant as a member of a protected class, such as the need to recruit a well-qualified candidate that might otherwise not accept the job if it offered less than 40 hours. Therefore, the evidence of discrimination is no more than equally balanced, and claimant has not shown that the reduction in hours constituted a grave situation as being discriminatory.

Claimant also asserted that he quit, in part, due to the way he was treated by the store manager and the regional manager. Claimant testified that the store manager made a derogatory statement about claimant's dental condition to claimant's co-workers, which was relayed to claimant, and that the store manager and the regional manager unnecessarily discussed sensitive personnel matters concerning claimant with claimant's co-workers. The employer did not rebut that the store manager made the derogatory statement. This statement, and claimant hearing that the store manager and the regional manager were discussing his potential discharge with co-workers, whether or not the store manager and the regional manager actually engaged in such discussions, demoralized claimant and caused him to fear for his job. However, even assuming that this treatment constituted a grave situation, claimant had a reasonable alternative to quitting.

The record shows that claimant was familiar with the employer's human resources manager and had made requests of her in the past with positive results. *See* Transcript at 32. This manager testified that the conduct claimant complained of after he quit, though she did not consider it harassment, was "unprofessional and would not be tolerated" had she known about it. Transcript at 34. Moreover, the manager explained that the store manager was "a very new manager and maybe not good at it, and that's [the human resources manager's] job to continue to coach and work with him." Transcript at 33-34. It can be inferred from this testimony that had claimant made the human resources manager aware of the unprofessional conduct he experienced, she would have taken steps to assist claimant in resolving the issue. Claimant testified that he did not direct his complaints to the human resources manager because he was "embarrassed about it" and did not "like to talk about it." Transcript at 16. Claimant also believed that the manager "[had] a lot on her plate." Transcript at 26. Given claimant's positive experiences in the past working with the human resources manager, and that it was her job to deal with such issues, claimant's explanations for not seeking help from her do not show that this alternative would have been futile. Accordingly, claimant had a reasonable alternative to leaving work of directing his complaints to the human resources manager, and therefore quit without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 19, 2024.

DECISION: Order No. 24-UI-261913 is affirmed.

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

DATE of Service: <u>September 16, 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.

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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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