

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0648

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 29, 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 April 28, 2024 (decision # L0004198103). Claimant filed a timely request for hearing. On August 12, 2024, ALJ Contreras conducted a hearing, and on August 21, 2024, issued Order No. 24-UI-263235, modifying decision # L0004198103 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 21, 2024.¹ On September 10, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) Nicholson Enterprises II, Inc. employed claimant as a secretary and bookkeeper at their automotive repair business from June 1, 2018, until April 26, 2024.

(2) Prior to April 1, 2024, claimant notified the employer that she intended to quit work by May 1, 2024, to become a caregiver for her ailing mother.

(3) On April 1, 2024, the employer came under new ownership. Claimant agreed to train her replacement before her planned leaving. The replacement started work on April 1, 2024, and was the daughter of the employer's new owners.

(4) After giving notice of her intent to resign, claimant learned that her father would be assuming caregiver duties for her mother, and claimant therefore no longer needed to, or intended to, quit work to become a caregiver. Claimant did not advise the employer of this and, after the new owners offered to allow claimant to rescind her resignation and continue working indefinitely on a part-time basis,

¹ Although Order No. 24-UI-263235 stated that it affirmed decision # L0004198103, it modified that decision by changing the effective date of the disqualification from April 28, 2024 to April 21, 2024. Order No. 24-UI-263235 at 4.

claimant declined and “never let them believe anything different than [she] was going to go take care of [her] mother.” Transcript at 35.

(5) Immediately following the change in ownership, claimant disagreed with how the new owners operated the business in several respects. Foremost, claimant was concerned that her replacement was permitted to bring her young children to work without properly supervising them, which claimant felt subjected the children to dangerous conditions, and subjected claimant to loud noise and occasional “hitting and kicking.” Transcript at 12. The children’s father was also an employee of the business. Claimant’s replacement was “working on getting a babysitter” while claimant trained her and intended her children’s presence at the business to be a short-term solution. Transcript at 43. Claimant occasionally mentioned her concerns to the children’s parents when she felt that she had observed them in particularly dangerous situations, but did not otherwise voice objections to their presence to the parents, the employer, or others. Claimant felt that she was “developing anxiety” from observing the children in situations she believed were dangerous. Exhibit 2 at 1.

(6) Claimant also disagreed with what she felt was the new ownership disparaging the previous owner and a former employee. Additionally, claimant felt that the new owners and employees were, at least on one occasion, “conversing so loudly” that she had difficulty helping a customer. Exhibit 2 at 1. Claimant believed that the way the new owners and employees ran the business lacked professionalism and prevented claimant from providing adequate customer service.

(7) At some point during April 2024, one of the owners suggested to claimant that she date one of the other employees, which made claimant “very uncomfortable.” Exhibit 2 at 1. Claimant replied that she did not date people she worked with. The owner repeated the suggestion on other occasions, but claimant did not reply or ask him to stop “because it was a very awkward situation for [her], and [she] was not sure how to handle the pressure of it.” Exhibit 2 at 1.

(8) In mid-April 2024, claimant told the employer that she still intended to resign as anticipated, allowing them to believe that the reason was to become her mother’s caregiver while the true reason was her dissatisfaction with the changes in how the business was operated. Claimant advised that her last day of work would be April 26, 2024, and claimant did not work for the employer after that date. The employer would have allowed claimant to continue working for them beyond April 26, 2024, if she desired.

CONCLUSIONS AND REASONS: Claimant 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 notified the employer before April 1, 2024, that she intended to resign by May 1, 2024, to become a caregiver for her mother. Circumstances changed, and claimant learned in April 2024 that she would not become her mother's caregiver and did not need to quit work for that reason. The record shows that the employer would have allowed claimant to rescind her resignation and continue working for the employer indefinitely. *See* Transcript at 34, 42. Nonetheless, claimant proceeded with her resignation and quit working for the employer on April 26, 2024, for reasons other than the need to become a caregiver. The relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017). Accordingly, only claimant's reasons for leaving work on April 26, 2024, are the subject of the good cause analysis.

Claimant quit working for the employer on April 26, 2024, because she was dissatisfied with how the new owners and employees had been running the business since they assumed control on April 1, 2024. Claimant's primary source of dissatisfaction was the presence of two young children in the workplace whom claimant felt were regularly in danger from a lack of supervision in a hazardous environment inside and outside of an auto repair shop. The parties offered differing accounts as to the extent and frequency of the danger and lack of supervision at issue. However, more likely than not, claimant was "developing anxiety" from witnessing the children in what she perceived to be dangerous and unsupervised situations. Exhibit 2 at 1. To this extent, claimant may have faced a grave situation, but had reasonable alternatives to leaving work.

Claimant testified that aside from briefly mentioning to the children's parents specific instances in which she observed the children facing danger, she did not raise the issue with the employer. Transcript at 19-20. It would have been reasonable for claimant to raise the issue with the employer's owners, who were also the children's grandparents, and to alert them that to the impact on her work and health these circumstances were causing. Additionally, claimant argued that the circumstances were such that intervention from the Occupational Safety and Health Administration (OSHA) or the Bureau of Labor and Industries (BOLI) was warranted. Claimant's Written Argument at 1. However, the record shows that claimant made no effort to contact these or other entities with potential jurisdiction to intervene, which would have been a reasonable course of action given the grave danger claimant believed the children to have been in. Therefore, to the extent claimant quit work due to the presence of her co-workers' children, she did so without good cause because although she may have faced a grave situation, reasonable alternatives were available.

Claimant also cited as a reason for quitting work that one of the owners suggested that she date another employee. Claimant testified that she dismissed the suggestion by telling the owner that she did not date co-workers, yet he continued to repeat the suggestion thereafter, making claimant "very uncomfortable." Transcript at 20. To the extent the employer continued to make unwanted suggestions of this nature, claimant may have faced a grave situation, but again had a reasonable alternative to leaving work.

Claimant testified that after deflecting the initial suggestion, she declined to respond at all when the suggestion was repeated on later occasions. Transcript at 20. This lack of response may not have made clear to the owner that repeating the suggestion was unwelcome. It would therefore have been reasonable under the circumstances for claimant to directly state to the owner that she did not wish to discuss dating at work and that the topic should not be mentioned again. Therefore, to the extent

claimant quit work due to the owner's suggestions that she date a co-worker, she did so without good cause because although she may have faced a grave situation, a reasonable alternative was available.

Aside from these reasons for quitting, claimant also quit, in part, because she was dissatisfied with other aspects of how the business was run, which she believed affected her ability to provide adequate customer service. These aspects included the new owners and employees "disparaging" the previous owner and his employee, and creating what claimant felt was an excessively loud and chaotic work environment. Transcript at 22. While feeling unable to provide adequate customer service was understandably frustrating to claimant, the record does not suggest that any negative repercussions from this would potentially accrue to her personally, rather than to the business itself. The record shows that the employer continued to be satisfied with claimant's work and desired that she remain in their employ. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work for reasons such as this that directly affected only their employer's interests rather than their own. Therefore, to the extent claimant quit work for this reason, she has not shown that she faced a grave situation and, accordingly, quit without good cause.

For these reasons, claimant quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective April 21, 2024.

DECISION: Order No. 24-UI-263235 is affirmed.

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

DATE of Service: October 3, 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 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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