

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0656

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 20, 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 April 14, 2024¹ (decision # L0004248308). Claimant filed a timely request for hearing. On September 10, 2024, ALJ Fair conducted a hearing, and on September 11, 2024, issued Order No. 24-UI-265687, reversing decision # L0004248308 by concluding that claimant voluntarily quit work with good cause and was therefore not disqualified from receiving benefits as a result of the work separation. On September 16, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered the employer's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Hurd's Custom Machinery, Inc. employed claimant as a fabricator from approximately 2020 through April 14, 2024.

(2) Throughout claimant's employment, he and the shop foreman had a contentious relationship. Claimant believed that the foreman would intentionally create safety hazards in the shop whenever a

¹ Decision # L0004248308 stated that claimant was denied benefits from April 14, 2024, through April 13, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. See ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning April 14, 2024, and until he earned four times his weekly benefit amount in subject employment.

new employee was hired, “as if he were trying to assert some sort of dominance or something.” Audio Record at 6:36. The foreman would also regularly say offensive things to claimant. Additionally, “on four different occasions,” claimant saw the foreman inhaling a “white powder” while at work that claimant believed to be methamphetamine, based on the foreman’s statement that it was his “drug of choice.” Audio Record at 9:15. As of April 2024, claimant considered each of these circumstances to be “an ongoing concern.” Audio Record at 9:12.

(3) On “several occasions,” claimant’s co-workers or supervisors referred to claimant as a “libtard,” which claimant found offensive. Audio Record at 11:00. On at least one occasion, the foreman referred to “less than desirable work” as “nigger work” in claimant’s presence. Audio Record at 11:03. The shop manager, who was also a part-owner in the business and oversaw the foreman, would “on a consistent basis” tell claimant to “go make it look like a white man did it,” referring to work that claimant was assigned to complete. Audio Record at 11:15.

(4) At some point during the first two years of claimant’s employment, claimant was working with others heating a piece of metal and they were directed to use a 40-pound clamp on the metal, which claimant told the shop manager posed a danger of the clamp “coming off” and striking bystanders as the metal expanded. Audio Record at 8:00. Claimant’s concern was ignored, and the employees were directed to proceed. The clamp “exploded off” and struck claimant in the face. Audio Record at 8:35.

(5) On April 14, 2024, claimant observed that the foreman had unnecessarily run extension cords across the shop floor to plug in a piece of machinery, which claimant felt posed a tripping hazard. Claimant unplugged the cords when the machine was not in use and plugged the machine into a closer outlet to reduce the hazard. The foreman “started screaming” at claimant, and claimant told him, “You do not need to bitch about me picking up a trip hazard,” to which the foreman replied that claimant “was the fattest bitch he’s ever seen.” Audio Record at 5:42. Claimant suspected that the foreman engaged in this conduct, in part, because the employer had recently hired one of claimant’s friends at claimant’s request.

(6) Immediately following this incident, claimant went into the shop manager’s office to complain about the foreman’s conduct. The shop manager “sat in his chair, crossed his arms, and said he wasn’t going to do anything about it.” Audio Record at 5:59. Based on this response and the employer’s history of failing to address his complaints, claimant felt that the ongoing problems with his work environment would never be addressed. Claimant therefore notified the employer of his resignation, with immediate effect, and did not work for the employer after that day.

(7) Prior to claimant’s April 14, 2024, complaint about the foreman to the shop manager, claimant had made similar complaints to the shop manager “quite regularly.” Audio Record at 13:38. The shop manager dismissed the complaints, including on April 14, 2024, as “a longtime feud” between claimant and the foreman, which he believed was due to claimant wanting the foreman’s job, and claimant being “moody.” Audio Record at 16:00. The shop manager had also previously explained that claimant’s complaints would not be addressed by telling claimant that the foreman “wasn’t replaceable.” Audio Record at 14:35.

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 because the employer disregarded his safety concerns and subjected him to derogatory and offensive language. The final instance of this occurred on April 14, 2024, when, according to claimant, the foreman laid extension cords across the floor of the shop to plug in a machine that could have been plugged in closer, creating what claimant felt was an unnecessary trip hazard. When claimant tried to remedy the hazard by plugging the machine into a closer outlet, the foreman used foul and derogatory language toward him. Upon immediately complaining to the shop manager, claimant was met with a refusal to take any action against the foreman. The employer did not rebut claimant’s account of this incident.

While this incident might not necessarily be considered grave in isolation, the record shows that this was the final example of an ongoing course of conduct by those involved. Claimant testified that he was subjected to racist remarks and other offensive language by the foreman and shop manager over the course of his employment. *See* Audio Record at 11:03. While the shop manager denied in his testimony having personally heard the foreman use the specific words claimant alleged, such a denial is insufficient to rebut claimant’s first-hand testimony that he heard the foreman say them, and the facts have been found accordingly. Further, the shop manager admitted that he himself “may have made the comment” that claimant should “make it look like a white man did it” regarding how he directed claimant to perform his work. Audio Record at 17:26. Therefore, more likely than not, the employer subjected claimant to offensive and racist language.

Moreover, the employer failed to rebut claimant’s contention that the shop manager and foreman permitted unsafe working conditions with regard to the examples in claimant’s testimony. The shop manager’s testimony did not address claimant’s injury from the metal spring incident or the foreman’s apparent repeated use of methamphetamine while working, but acknowledged receiving claimant’s complaint that the foreman may have unnecessarily laid out extension cords, agreeing that “it’s common to have to pay attention to where you step.” Audio Record at 15:20. The shop manager further agreed that claimant made similar complaints “quite regularly” against the foreman. Audio Record at 13:40. However, the employer failed to rebut claimant’s testimony that that the shop manager refused to make any efforts to address claimant’s concerns about the work environment following these complaints. Therefore, more likely than not, the employer subjected claimant to unnecessarily dangerous working conditions on an ongoing basis.

The circumstances claimant faced by the employer subjecting him to offensive and racist language as well as unnecessarily dangerous working conditions were such that that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Nonetheless, the employer argued that claimant’s decision to continue working up to the time of his resignation despite the ongoing

nature of his complaints, and that claimant would attempt to secure a job for his friend with the employer shortly before his resignation, undermined his contention that he faced a grave situation. Employer's Written Argument at 1. However, the circumstances relevant to the good cause analysis are those present at the time claimant stopped working. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017) (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). The record shows that the events of April 14, 2024, in combination with the ongoing conditions claimant had faced to that date, constituted a grave situation that prompted claimant to quit work when he did.

Further, claimant had no reasonable alternative to leaving work. The shop manager's response to claimant's repeated complaints was that the foreman, who was the primary subject of the complaints and cause of the grave situation claimant faced, "wasn't replaceable." Audio Record at 14:35. Additionally, the shop manager acknowledged both failing to take action in response to claimant's final complaint, and to having made the comment that claimant should make his work product "look like a white man did it." As the record does not show that any higher authority existed at the employer to which claimant could have complained about the conduct of the foreman or shop manager, pursuing any further recourse through the employer would, more likely than not, have been futile. Accordingly, claimant had no reasonable alternative but to quit work, and therefore left work with good cause.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits as a result of the work separation.

DECISION: Order No. 24-UI-265687 is affirmed.

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

DATE of Service: October 8, 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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