

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0742

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 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 benefits effective May 19, 2024 (decision # L0004680655). Claimant filed a timely request for hearing. On October 17, 2024, ALJ Rackstraw conducted a hearing, and on October 18, 2024, issued Order No. 24-UI-269949, modifying decision # L0004680655 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 12, 2024. On October 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant as an e-commerce clerk from October 27, 2022, until May 16, 2024.

(2) Claimant sought long-term medical treatment for migraine headaches and other conditions that impacted his ability to work. He asked the employer allow him extra breaks as an accommodation and the employer agreed. Whenever claimant would ask the assistant store leader for an extra break, the request would be granted. However, on occasions when that person was not present claimant would not consistently be granted extra breaks by others who were supervising him. Except for one instance, the assistant store leader and the human resources department were unaware that claimant was not receiving all of the breaks he requested.

(3) On or about February 3, 2024, a “team leader” intentionally struck claimant in the back without explanation. Transcript at 20. Claimant complained to the employer. The team leader explained to the employer that he had intended it as a complimentary “pat on the back.” Transcript at 33. Claimant asserted to the employer that the circumstances did not support that explanation and that it was an “assault” that needed to be investigated. Transcript at 15. The employer did not interview a witness to the event, review video footage, or otherwise investigate or discipline the team leader beyond giving

him a verbal warning. Claimant also complained to a union representative who said that there was “nothing they could do.” Transcript at 19. The team leader did not touch or strike claimant again.

(4) On March 30, 2024, the employer gave claimant a written warning regarding having been late for work or absent on several occasions in February 2024. Claimant was warned that additional attendance violations could result in a suspension or discharge. Claimant complained to the union representative that some of the attendance violations at issue should have been excused. The union intervened on claimant’s behalf, causing the employer to excuse some of the violations. Following the warning, on April 4, 5, 7, 8, and 11, 2024, claimant was late for work.

(5) In the days leading up to May 15, 2024, claimant was absent from work for medical reasons. On May 15, 2024, claimant’s supervisor called claimant into a meeting to discuss what the employer considered to be attendance policy violations. The employer intended to suspend claimant for three workdays, largely based on instances of tardiness since the March 30, 2024, warning, and not the more recent medical absences. Before the suspension could be fully discussed, claimant said, “[I]f that’s the case, I quit,” and left the worksite. Transcript at 5. Claimant did not work for the employer thereafter. Claimant quit because he felt that the suspension was unwarranted and because of his displeasure at how the employer handled his complaint against the team leader and his request for extra breaks.

(6) Claimant was aware that he could have challenged the suspension with the employer at various levels of management by providing excuses for the absences or instances of tardiness. Claimant also was aware that he could have sought assistance from the union in challenging the suspension or failure to accommodate his need for extra breaks, but he declined to do so due to the union representative’s response to his assault complaint against the team leader.

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). Claimant had migraine headaches and other conditions, permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for their employer for an additional period of time.

Claimant quit work when he learned he was facing a suspension for alleged violations of the employer’s attendance policy. In the context of the employer having failed to investigate claimant’s allegation of assault to his satisfaction and, in claimant’s view, to accommodate his need for extra breaks, claimant “decided to quit because [he] thought there. . . [was] nothing [he] can do [a]nd they’re just trying to find a way to fire [him].” Transcript at 12. These reasons did not singly or in combination amount to good cause for quitting work. Claimant suffered from migraine headaches and other chronic conditions for

which he sought medical treatment, and therefore his reasons for quitting are evaluated under the impairment standard set forth in OAR 471-030-0038(4).

To the extent claimant quit work to avoid what he believed would have been an inevitable discharge, claimant has not shown good cause. 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). Here, the employer’s witness testified that the employer had no intention of discharging claimant at the time he quit and that he was only subject to a three-day suspension from work under their progressive discipline policy. Transcript at 8, 28. Claimant did not rebut this testimony and therefore failed to show that he faced imminent discharge.

The imminent suspension was not a grave situation. While claimant asserted that he would have been able to produce doctor’s notes excusing his most recent absences, the discipline was focused on earlier instances of tardiness for which claimant did not provide an explanation in the record. Claimant has not shown that the suspension was unwarranted. Moreover, the employer provided various levels of review at which claimant could challenge the suspension, but claimant did not make such a challenge. Even if the instances of tardiness were attributable to claimant’s impairments, a reasonable and prudent person with the characteristics and qualities of an individual with such impairments would not have quit work for this reason, especially without having first challenged the suspension.

To the extent claimant quit work due to his dissatisfaction with the employer’s handling of his assault complaint, this also was not a grave situation. The incident at issue occurred on February 3, 2024. The employer questioned the team leader and apparently accepted his explanation that it had not been his intention to strike claimant in a harmful or unwanted manner. Though claimant disagreed and believed that objective evidence, if reviewed by the employer, would have shown that claimant was struck maliciously, the employer’s resolution of the matter in warning the team leader not to touch claimant again proved to be effective. Through May 15, 2024, the record does not suggest that claimant faced further unwanted touching or retaliation for reporting the incident. While the employer’s potentially inadequate investigation and response may have posed a grave situation to claimant immediately after the incident, this was no longer the case at the time he quit, as the three uneventful months that followed demonstrated the adequacy of the employer’s response in protecting claimant from further harm. A reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would not have quit work for this reason when claimant did.

To the extent claimant quit work due to the employer’s failure to accommodate his need for extra breaks, claimant has also not shown that he faced a grave situation. To be clear, an employer’s refusal or inability to make medically necessary accommodations for an employee may constitute a grave situation. However, claimant has not shown that the employer was unwilling to accommodate his need for extra breaks, only that some people overseeing some of claimant’s shifts failed to ensure that the breaks were available to him. The assistant store lead for human resources testified that the employer intended to provide the requested accommodation and that he had personally approved breaks for claimant whenever claimant asked. Transcript at 25. Claimant did not rebut this testimony. The witness further testified that he was aware of “at least one incident” where claimant was asked to do additional work before taking a requested break, and denied recalling any conversation where claimant otherwise complained to him that he had been denied a requested break. Transcript at 25. In rebuttal, claimant

testified that he complained to the witness and another human resources representative that others had failed to allow him breaks, but that he could not remember what their responses were to the complaints. Transcript at 22. Claimant has not shown by a preponderance of the evidence that the employer refused to accommodate his need for extra breaks, though on some occasions they neglected to ensure that claimant was able to take them. This situation lacked gravity because the record does not show that the human resources personnel responsible for managing accommodation requests were aware that lower-level supervisors were not consistently making the breaks available to claimant. A reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant's would not have quit work for this reason without first proposing to human resources that their day-to-day supervisors be specifically notified of the accommodation and held accountable if they failed to provide it.

Further, even if claimant had faced a grave situation at the time he quit work as a result of facing suspension or the employer failing to accommodate his need for extra breaks, claimant had reasonable alternatives to quitting. Claimant had previously been successful in challenging discipline for alleged violations of the attendance policy through his union, and the record does not suggest that this would have differed with regard to the suspension, and could have been undertaken instead of or in addition to challenging the suspension on his own. Similarly, the record suggests that the union could have intervened regarding the failure to provide extra breaks. Claimant testified that he did not "trust" the union representative to handle any of his complaints following the dismissive response he received when complaining about the employer's handling of his assault allegation. Transcript at 19. However, as the assault complaint presumably involved the competing interests of two union members, whereas the suspension and break complaints did not, seeking assistance from the union as to the latter complaints would have been a reasonable alternative to quitting. Because claimant did not quit work as the result of a grave situation, and had reasonable alternatives to quitting had the situation been grave, claimant quit work without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 12, 2024.

DECISION: Order No. 24-UI-269949 is affirmed.

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

DATE of Service: November 20, 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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