

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0760

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 16, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 21, 2024 (decision # L0005897309).¹ Claimant filed a timely request for hearing. On October 10, 2024, ALJ Janzen conducted a hearing at which the employer failed to appear, and on October 11, 2024, issued Order No. 24-UI-269045, modifying decision # L0005897309 as to the disqualification date by concluding that voluntarily quit work without good cause and was disqualified from receiving benefits effective May 5, 2024. On October 24, 2024, claimant filed an application for review of Order No. 24-UI-269045 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) D & H Texaco LLC employed claimant as a manager at their gas station from August 4, 2004, until May 8, 2024.

(2) Claimant had worked at the employer's gas station for nearly 20 years, and had worked in close coordination with the employer's owner as manager of the gas station for about nine years. Claimant and the owner had had multiple disagreements over the years, but had successfully resolved their disagreements throughout claimant's time working for the employer.

(3) On or about the beginning of January 2024, the owner began a leave of absence from the gas station due to the illness of his father. While the owner was away, claimant took care of ordering products for the store without any support or input from the owner.

(4) On May 8, 2024, the owner returned to the gas station for the first time since his leave of absence began in January 2024. When the owner returned, he approached claimant with an attitude that claimant perceived as being "condescending", and asked where the products were that had sold while he had been

¹ Decision # L0005897309 stated that claimant was denied benefits from April 21, 2024, to July 26, 2025. However, decision # L0005897309 should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 21, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

away. Audio Record at 15:09. The owner did not yell at claimant or threaten her during this interaction. Although the owner did not specifically accuse claimant of stealing anything, claimant interpreted his question as implying that she had taken some of the products that had sold. The owner's question upset claimant and hurt her feelings. Claimant felt the owner's question was "rude" because she was a long-time employee and had taken care of the gas station without support for the previous four months while the owner was away. Audio Record at 19:30.

(5) Claimant responded that the products had sold and stated, "I'm done." Audio Record at 11:48. The owner asked if claimant was threatening him and claimant replied, "No, I'm not threatening you, here." Audio Record at 13:17. Claimant then handed the owner her keys to the gas station and left the premises.

(6) Claimant did not work for the employer again. Claimant expected the owner to call to ask her to return but he did not.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 on May 8, 2024, after the employer's owner approached her and asked where the products were that had sold while he had been away on leave. At hearing, claimant described the owner's tone and body language at the time he asked the question as "rude" and "condescending". Audio Record at 19:46, 20:59, 19:30, 15:09. However, claimant conceded that the owner was not yelling when he made those assertions, and did not actually ask if claimant had stolen anything, although she interpreted his question as implying that he thought she had. Audio Record at 15:02, 18:02. Claimant also testified that when she and the owner had had disagreements in the past, they had managed to resolve their differences and keep working together by "talk[ing] about it later once everyone's cooled off." Audio Record at 12:18.

Claimant quit work without good cause. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work based on claimant's circumstances when she quit. Given that claimant was a long-time employee and had worked without support for months, it was understandable for her to feel insulted when the owner questioned her in a way that she interpreted as implying she had taken product. However, it is not, on this record, unreasonable for the employer to have inquired about the status of store product upon his return from an absence. The owner was gone for four months and would reasonably have had questions about inventory. Moreover, the owner's treatment of claimant in asking about the product, while perceived by claimant as condescending in tone, was not objectively offensive by being verbally abusive or physically threatening. Additionally, rather than

quitting work, claimant had the reasonable alternative of tolerating the owner's questions about inventory and continuing to work, and then "once everyone's cooled off" talking with the owner about the matter and expressing why she felt the questions were rude and insulting. Audio Record at 12:18. Because she did not do so, claimant did not voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit.

For these reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

DECISION: Order No. 24-UI-269045 is affirmed.

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

DATE of Service: November 21, 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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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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