

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0764

Reversed
Disqualification

PROCEDURAL HISTORY: On September 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0005867582). The employer filed a timely request for hearing. On October 16, 2024, ALJ Hall conducted a hearing at which claimant failed to appear, and on October 23, 2024, issued Order No. 24-UI-270506, affirming decision # L0005867582. On October 28, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Willamette Education Service District employed claimant as an English learner specialist from August 9, 2021, until May 14, 2024.

(2) On November 28, 2023, claimant acted in a verbally-threatening manner toward her supervisor. On November 29, 2023, the employer placed claimant on administrative leave because of this incident.

(3) While claimant was on leave, the employer discovered that claimant did not have a type of teaching license required to perform her job. The employer had hired claimant without verifying whether claimant had the license. While on leave, the employer sponsored a request for claimant to hold an emergency form of the license, claimant provided the employer proof of “conditional” enrollment in a program necessary to obtain the license, and the Teacher Standards and Practices Commission (TSPC) allowed claimant to hold an emergency license. Transcript at 8. The emergency license was valid through at least June 30, 2024.

(4) On February 21, 2024, claimant returned to work from leave. The employer gave claimant a letter of reprimand for the incident in which she verbally threatened her supervisor. Claimant was not subject to being discharged for that incident or for failing to have the teaching license.

(5) Upon claimant's return to work, claimant continued to have difficulty working with her supervisor. Claimant also resisted using certain software programs that her coworkers used, which the employer found disruptive.

(6) To address claimant's difficulties with her supervisor, claimant agreed to a mediation with her supervisor. The employer also gave claimant a "letter of directive" that outlined six expectations claimant was to follow, including refraining from making threatening or unprofessional statements to coworkers and committing to using the employer's software programs. Transcript at 15.

(7) Claimant and her supervisor participated in several mediation sessions. Claimant made initial progress regarding her difficulties with her supervisor. Claimant later participated in a mediation session in which the mediator considered claimant to have been disrespectful towards her supervisor. Thereafter, the employer's human resources (H.R.) director perceived the mediation process as "not going well." Transcript at 9.

(8) Because of problems with her college transcripts, claimant had difficulty enrolling and was delayed in giving the employer proof of actual enrollment in a program necessary for the license she was then holding on an emergency basis. The employer eventually had to provide proof to the TSPC that claimant was enrolled in such a program. This caused the H.R. director to "apply pressure on [claimant] to get into [a] program." Transcript at 18. However, the employer did not give claimant a firm deadline to comply with providing proof of actual enrollment.

(9) On May 12 or 13, 2024, claimant met with several of her supervisors and discussed options regarding the mediation process. The parties discussed the possibility of having additional mediation sessions with a different mediator. The parties also discussed ending the employment relationship with a separation agreement. On May 14, 2024, claimant approached the employer's H.R. director "and indicated that she wanted to enter into a separation agreement, and that she would resign." Transcript at 12-13.

(10) On May 14, 2024, claimant signed a separation agreement, left the premises, and did not work for the employer again.

(11) At the time claimant signed the separation agreement and quit working for the employer, claimant's job was not in jeopardy. Rather, had the employer determined that claimant was in violation of the directives outlined in the letter of directive, the discipline the employer would likely have imposed would either have been a second letter of reprimand or a day or two of unpaid suspension.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of the Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The order under review concluded that the nature of the work separation was a discharge, and that claimant was discharged, but not for misconduct. Order No. 24-UI-270506 at 3-4. The record supports the conclusion that the work separation was a voluntary leaving, not a discharge.

On May 12 or 13, 2024, claimant met with her supervisors, and in that meeting the parties discussed the possibility of claimant participating in additional mediation sessions with a different mediator. The parties also discussed ending the employment relationship with a separation agreement. On May 14, 2024, claimant approached the employer's H.R. director "and indicated that she wanted to enter into a separation agreement, and that she would resign." Transcript at 12-13. Moreover, at hearing, the employer's H.R. director testified that at the time of claimant's work separation, discharge "wasn't on the table" and that "[t]he conduct did not rise to the level of termination." Transcript at 14. The H.R. director further testified that had the employer determined that claimant was in violation of the directives outlined in the letter of directive, the discipline the employer would likely have imposed would either have been a second letter of reprimand or a day or two of unpaid suspension. Transcript at 17.

This evidence suggests that the separation agreement was mutually agreed upon during the meeting that occurred on May 12 or 13, 2024 and that claimant initiated entering into the agreement by approaching the H.R. director after a day or two of consideration. The H.R. director's testimony that claimant did not face a risk of discharge was unequivocal and unrebutted. The employer also made substantial efforts to preserve the employment relationship. For example, the employer worked with the TSPC to enable claimant to obtain an emergency form of the teaching license required for claimant to perform her job. The employer also refrained from imposing a firm deadline for claimant to comply with providing them with proof of actual enrollment in a program necessary to support the emergency license. This lends further support to the conclusion that the employer was willing to continue employing claimant.

For these reasons, the weight of the evidence favors the conclusion that claimant could have continued working for the employer for an additional period of time, but, upon approaching the H.R. director and entering into the separation agreement on May 14, 2024, claimant was unwilling to do so. The work separation was therefore a voluntary leaving that occurred on May 14, 2024. Moreover, where an employer and claimant mutually agree on a separation date there is no discharge. See *J.R. Simplot Co. v. Employment Div.*, 102 Or App 523, 795 P2d 579 (1990).

Voluntary Leaving. 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 left work without good cause. The record indicates that claimant clashed with her supervisor, leading both to attempt to resolve the conflict through mediation. The record also shows that, at least initially after returning to work on February 21, 2024, claimant resisted using software programs

that her coworkers used, which the employer found disruptive. Claimant failed to show that these issues presented her with a situation of such gravity that she had no reasonable alternative but to quit when she did.

First, it is not evident in the record that claimant continued to resist using the software programs after the employer gave claimant a “letter of directive” that, among other expectations, outlined that claimant was expected to commit to using the employer’s programs. Transcript at 15. Even if she did, however, claimant did not face a grave situation because she could have presumably followed the directive. Further, the record shows that the employer would not have discharged claimant for violating the directive to use the software programs, but rather, would have imposed the lesser discipline of giving claimant a second letter of reprimand or a day or two of unpaid suspension. Second, while the issue of claimant’s licensure could have created a grave situation, the employer was working with claimant to meet the requirements and at the time of separation the record does not show that claimant was under a firm deadline to provide proof of actual enrollment. Third, as to claimant’s difficulties with her supervisor, claimant and her supervisor had been pursuing mediation, and the process had enabled claimant to make initial progress regarding her difficulties with her supervisor. Although the mediation process appeared to the employer’s H.R. director to be “not going well” after claimant was considered by the mediator to have been disrespectful toward her supervisor in a mediation session, continuing to pursue mediation was a reasonable alternative to quitting. Transcript at 9. The record shows that the option of participating in additional mediation sessions with a different mediator was available to claimant, and was under consideration when claimant met with several of her supervisors to discuss options on May 12 or 13, 2024. Claimant, who failed to appear at hearing and therefore provided no evidence, did not show that continuing to pursue meditation was not a reasonable alternative to quitting work.

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

DECISION: Order No. 24-UI-270506 is set aside, as outlined above.

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

DATE of Service: November 27, 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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