

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0783

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation (decision # L0005264402). The employer filed a timely request for hearing. On October 25, 2024, ALJ Bender conducted a hearing, and on October 31, 2024, issued Order No. 24-UI-271670, reversing decision # L0005264402 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective June 9, 2024. On November 7, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant’s argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant’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 claimant’s argument to the extent it was based on the record.

FINDINGS OF FACT: (1) YWCA of Greater Portland employed claimant as a domestic violence victim advocate from May 1, 2023, until June 10, 2024.

(2) During claimant’s employment, claimant had a contentious relationship with their supervisor and program director. However, the employer did not issue any verbal or written warnings to claimant regarding their behavior generally, or towards these individuals specifically, prior to June 2024. Claimant did not say or do anything during their employment with the purpose of supporting or promoting white supremacy, or that could objectively be interpreted as supporting or promoting it.

(3) On May 23 and 24, 2024, claimant was involved in incidents that the employer believed “violated [the employer’s] mission, vision, and values.” Exhibit 1 at 7. One incident involved an “outburst” where claimant raised their voice and threatened to quit during a virtual meeting they attended from their home. Transcript at 12. The other incident involved claimant “slamming their laptop shut” in another

location, but not in proximity to any clients. Exhibit 1 at 7. On May 30, 2024, the employer placed claimant on a leave of absence in response to these incidents to investigate the matters and claimant's performance generally. The leave of absence ended on June 6, 2024.

(4) On June 7, 2024, the employer presented claimant with a performance improvement plan (PIP). The PIP detailed several points of dissatisfaction with claimant's work including various errors, delays, improper delegation to others, or failure to follow procedures in completing their assigned work. It also cited the "outbursts" on May 23 and 24, 2024, inaccurately stating that they had occurred in the presence of clients, and "[o]ngoing microaggressions towards supervisor and program director of color in the form of upholding white supremacy culture — specifically perfectionism, defensiveness, individualism, and worship of the written word. Other microaggressions include questioning the qualifications of their supervisor, questioning their supervisors' instructions and decision making; requesting a new supervisor; [and] speaking disparagingly about/towards their supervisor." Exhibit 1 at 9 (emphasis in original).

(5) Claimant disagreed with "several items" alleged in the PIP and felt that some were "unreasonable accusations against [claimant's] character [that]. . . didn't align with [claimant's] values as a person." Transcript at 11. Claimant particularly took issue with the assertions that the May 23 and 24, 2024 incidents occurred in the presence of any of the employer's clients, and that claimant engaged in "white supremacy behaviors." Transcript at 13. Claimant requested that the employer negotiate edits to the contents of the PIP, but the employer declined to do so. The PIP stated, "Refusal of this plan may result in immediate termination. By signing this [PIP], I acknowledge, understand, and accept the terms and conditions of this Plan." Exhibit 1 at 10. The employer told claimant when the PIP was presented that if claimant "did not agree and sign that [PIP] on Monday, June 10th that they would have to move forward with separation." Transcript at 10. Claimant felt that they "had no choice but to resign because [claimant] did not agree to their terms." Transcript at 10. Claimant did not sign the PIP.

(6) On June 10, 2024, claimant submitted a letter of resignation to the employer which stated that it was "effective when it's determined to be appropriate. Please let me know what would work best for you whether it be an immediate departure or a transitional period." Exhibit 1 at 5. The employer accepted the resignation with immediate effect and claimant did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant quit work with good cause.

Nature of the work separation. If an 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 an 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).

Claimant moved to sever the employment relationship on June 10, 2024, by submitting a resignation letter to the employer. The letter allowed the employer to select the effective date of the resignation, either "an immediate departure" or after "a transitional period." Exhibit 1 at 5. Therefore, while claimant was willing to work for an additional period of time after June 10, 2024, the employer did not allow claimant to do so by considering their resignation to have immediate effect. However, when an employee delegates to the employer the right to choose the separation date, the separation remains a voluntary leaving even if they were willing to work beyond the date chosen by the employer. *Westrope*

v. Employment Dept., 144 Or App 163, 925 P2d 587 (1996). Accordingly, the work separation was a voluntary leaving.

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). “[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 because the employer required that they “acknowledge. . . and accept” the provisions of a PIP that included what claimant considered “unreasonable accusations against [their] character.” Exhibit 1 at 9; Transcript at 11. The order under review concluded that this did not constitute a situation of such gravity that claimant had no reasonable alternative to quitting. Order No. 24-UI-271670 at 3. The record does not support this conclusion.

The employer’s witness testified, based on employment records, that the PIP was drafted after claimant “had been given several written and verbal warnings from their supervisor.” Transcript at 7. However, upon further questioning, the witness could not provide details about these warnings, including dates and locations of the warnings or the events leading to them, and the witness had no first-hand knowledge of them. Transcript at 7-8. In contrast, claimant testified, “I’ve never had any written or verbal warnings on my behavior.” Transcript at 12. Additionally, claimant testified that the May 23 and 24, 2024 outbursts had not occurred in “proximity to” the employer’s clients, contrary to what was stated about the incidents in the PIP. Transcript at 12-13. The employer’s witness did not testify to having first-hand knowledge of the May 23 and 24, 2024 outbursts. Where these accounts conflict, claimant’s first-hand accounts are entitled to greater weight than the employer’s hearsay accounts to the contrary, and the facts have been found accordingly.

The PIP asserted several errors or inefficiencies in claimant’s work that the employer desired to correct. It is unclear from the record which of the assertions of this type, if any, claimant disagreed with. Claimant’s testimony that they had not received prior warnings suggests that they may have disagreed with some or all of these assertions, or at least had been unaware that the employer found their performance unsatisfactory in the ways the PIP identified. The PIP also made assertions regarding the May 23 and 24, 2024 incidents with which claimant partially disagreed, with the disagreement largely concerning who was present to witness claimant’s actions rather than whether those actions had occurred. The nature of these assertions as reasonable critiques of an employee’s work habits or behaviors, even if claimant believed them to be untrue or partially untrue, did not necessarily give rise to a grave situation by the employer’s demand that claimant acknowledge and accept them.

However, the assertion that claimant engaged in “white supremacy culture,” described only as “perfectionism, defensiveness, individualism, and worship of the written word” and questioning or disagreeing with their supervisor, was taken by claimant as an “unreasonable” attack on claimant’s character and “values as a person.” Transcript at 11. The vague description in the PIP of what the

employer considered “upholding white supremacy culture” is insufficient to rebut claimant’s testimony, from which it can be inferred that claimant had not engaged in such behavior. *See* Transcript at 11. Requiring an employee to sign a document acknowledging and accepting such an assertion where, as here, it is unfounded, would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work if there was no reasonable alternative.

Claimant had no reasonable alternative to quitting work. Claimant testified that they asked if the employer was willing to negotiate the language of the PIP or otherwise edit it based on claimant’s specific objections, but the employer refused to do so on June 7, 2024, when the PIP was presented, and the employer gave no indication that their position on this had changed by June 10, 2024. Transcript at 11, 15. Moreover, the PIP stated, “Refusal of this plan may result in immediate termination,” which is consistent with claimant’s testimony that the employer told claimant on June 7, 2024, that they would be discharged if they failed to sign the PIP by June 10, 2024. Exhibit 1 at 10; Transcript at 10. Accordingly, no reasonable alternative to quitting existed that would have preserved claimant’s employment, and claimant therefore quit work with good cause.

For these reasons, claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-271670 is set aside, as outlined above.

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

DATE of Service: December 13, 2024

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have 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 desisyong ito.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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