

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1052

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144229). Claimant filed a timely request for hearing. On October 25, 2018, ALJ Janzen conducted a hearing, and on October 26, 2018 issued Order No. 18-UI-118809, affirming the Department's decision. On November 7, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because he did not certify that he provided a copy of it to the employer as required by OAR 471-041-0080(2)(a) (October 29, 2006).

FINDINGS OF FACT: (1) Lincare, Inc. employed claimant as a sales representative from July 30, 2018 to August 3, 2018.

(2) Within in the first few days of employment claimant learned that he was going to have to travel to Florida for a two-week training program that involved taking many exams. Claimant had test anxiety dating back to childhood, when he experienced embarrassment when other children laughed at him for doing poorly on exams and he had to take special classes in high school.

(3) Claimant discussed the training and exams with a coworker who had taken the training, and looked at her training notebooks. He felt the subject matter was over his head. Claimant experienced anxiety at the prospect of taking exams about the subject matter in training. He felt he would not be successful and would feel embarrassment if he failed exams or was sent home for failing exams.

(4) Claimant decided to quit his job rather than undergo training that involved taking exams, and felt like he would not have applied for or taken the job had he known beforehand that he would have to take exams if he got the job. He did not want to try attending the training to see how it went because he was concerned about how much the training would cost the employer.

(5) On August 3, 2018, claimant notified the employer that he quit work. Prior to quitting, he did not discuss his concerns about the training and exams with management, a supervisor or the trainers, and he did not ask them what the consequences were if he failed the exams, or whether the employer had any alternative exam formats or accommodations available for individuals with test anxiety.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). 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 his employer for an additional period of time.

Claimant stated at the hearing that he had a disability, which he described as “examophobia.” Audio recording at ~ 8:50-11:00. The first issue is therefore whether claimant had a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h), because the standard that is to be applied in a quit case involving a claimant with impairments is that of a reasonable and prudent person with the characteristics and qualities of an individual with such impairment rather than a reasonable and prudent person of normal sensitivity. Although claimant described experiencing emotional trauma in his childhood based upon the test anxiety and his experiences performing poorly on tests, claimant did not establish that he was ever diagnosed with, for example, anxiety, depression, or some other condition with respect to the anxiety he felt. Claimant therefore did not establish that he had an “impairment,” and the applicable standard is that of a reasonable and prudent person without impairment.

There is no dispute that claimant experienced a significant amount of anxiety at the prospect of taking tests. However his testimony about the effect of the anxiety related to the emotional trauma he suffered as a child that led to his avoidance of exams as an adult. He did not describe what happened when he took exams as an adult, or how he coped. He did not describe experiencing such severe physical or mental effects from test anxiety in adulthood such as headaches, elevated blood pressure, stomach or digestive ailments, vomiting, depression, sleep interruptions, or other such symptoms that might have made the prospect of taking an exam as an adult a grave situation.

Nor does the record show that claimant lacked reasonable alternatives to quitting work when he did. To the extent his anxiety caused him to fear suffering embarrassment as a consequence of failing an exam during training, he did not speak with management, supervisors, or trainers about the exams or ask whether he was required to pass the exams, what would happen if he failed the exams, or whether the trainers would make his exam scores public or otherwise call him out or cause him embarrassment in the event he failed an exam. He did not know, and did not ask, if the employer had any testing formats or accommodations available for individuals who experienced test anxiety.

In sum, while claimant experienced anxiety at the prospect of undergoing training that involved taking tests, he quit work without giving the employer any opportunity to address or resolve his concerns. On this record, claimant did not establish that his test anxiety was a situation of such gravity that he had no reasonable alternative but to leave work. He therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Order No. 18-UI-118809 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: December 11, 2018

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 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 الاستئناف 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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