

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1061

Reversed & Remanded

PROCEDURAL HISTORY: On September 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 130416). The employer filed a timely request for hearing. On October 16, 2018, ALJ Monroe conducted a hearing, and on October 24, 2018, issued Order No. 18-UI-118682, concluding claimant voluntarily left work without good cause. On November 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-118682 is reversed and this matter is remanded for further proceedings.

Claimant submitted written argument to EAB, and provided copies to the other parties. In his written argument, claimant included documents (doctor reports and a letter from vocational rehabilitation) that were already part of the hearing record as Exhibit 1, and EAB therefore considered them in reaching this decision. Claimant also submitted new information with his written argument that was not part of the hearing record. The new information was titled "Written Statement for Support of EAB Application for Review" (Claimant's Written Argument at pages 3-6), and claimant's two two-page written statements about his verbal exchanges with the employer's owner on April 16 and 18, 2018 (Claimant's Written Argument at pages 25-28). New information will be considered only if it is relevant and material to EAB's determination and factors and circumstances beyond claimant's control prevented him from offering the information at hearing. *See* 471-041-0090(2) (October 29, 2006).

The new information relates to claimant's disabilities and to the incidents that prompted him to quit work with the employer. We therefore find the information relevant and material to EAB's determination. Claimant also asserted that his autism and language disorder affected his ability to provide oral information at hearing. We find that claimant's disabilities were factors beyond his control

that prevented him from providing the information at hearing. Claimant's Written Statement for Support of EAB Application for Review (Claimant's Written Argument at pages 3-6), and claimant's written statements about his verbal exchanges with the employer's owner on April 16 and 18, 2018 (Claimant's Written Argument at pages 25-28) are hereby entered into evidence as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. The parties may object to our admitting EAB Exhibit 1 into the record, in writing, within ten days of our mailing this decision. OAR 471-041-0090(3). Unless such objection is received and sustained, the exhibit will remain in the record at EAB Exhibit 1. Because the case is being remanded to the Office of Administrative Hearings (OAH) for further inquiry, the parties will also have the opportunity to respond to the new information. The ALJ should also inquire further with claimant as necessary to clarify the new information.

In addition to development of the record regarding the new information provided by claimant, the ALJ should also inquire further with the parties about how claimant's disabilities affected how he reacted during the verbal exchanges he had with the employer's owner on April 16 and 18, 2018, and how they affected his willingness to continue working for the employer after April 18. The ALJ should also inquire further with the parties about the owner's statements to claimant about the email claimant sent the owner on April 16, including what the owner stated, the reasons she made the statements that she did regarding the email, and claimant's response to the owner's statements. The ALJ should ask claimant what he understood each statement to mean, and how he reacted to each statement. At hearing, the owner asserted that she did not believe the email was "genuine." Transcript at 23. The ALJ should ask the owner what she meant by that assertion, and what she stated to claimant on April 18 regarding her concerns in that regard. The ALJ should ask claimant about his vocational rehabilitation counselor, including the type of support claimant sought from him, particularly after claimant's probationary period ended. The ALJ should ask the employer why it gave claimant a suspension, rather than a warning, for having apparently dozed while working. At hearing, claimant described the prospect of continuing to work for the employer after the April 16 and 18 interactions with the owner as "too stressful," and described feeling "scared," "intimidated," and "verbally attacked." Transcript at 53-54. The ALJ should ask claimant how the circumstances at work affected him as a person with autism and a language disorder, and address how specific statements or behaviors from the owner affected claimant.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); see accord *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because remand is necessary for a full and fair inquiry regarding whether claimant voluntarily left work with good cause, Order No. 18-UI-118682 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 18-UI-118682 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 13, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-118682 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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

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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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