

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1096

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause (decision # 84621). Claimant filed a timely request for hearing. On November 2, 2011, ALJ Meerdink conducted a hearing, and on November 6, 2018 issued Order No. 18-UI-119261, affirming the Department's decision. On November 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not offered into evidence during the hearing. Claimant did not explain why she was not able to present this information at the hearing or otherwise show, as required by OAR 471-041-0090(2) (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider the new information contained in claimant's written argument. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) DVA Renal Healthcare Inc. employed claimant as a patient care technician for patients on dialysis from November 2, 2009 until August 16, 2018.

(2) For several years before the summer of 2018, claimant's work schedule was ten or eleven hour shifts on Tuesdays, Thursdays and Saturdays. During the summer of 2018, claimant had two children, one thirteen years old and the other six years old. The thirteen year old was able to care for himself if claimant worked hours when he was not in school. Claimant used before-school daycare for the six year old on the Tuesdays and Thursdays that she worked. Claimant was usually off from work before the six year old needed to leave school and, because claimant would pick him up from school, he did not need after-school daycare on the Tuesdays and Thursdays that she worked.

(3) During the summer of 2018, the employer lost some technicians, and until it hired new technicians needed its remaining technicians to work additional shifts. As of July 2018, claimant understood that she probably would be asked to work one additional shift per month. Around that time, claimant expressed

to the facilities administrator that it would be difficult for her to work any days in addition to those she usually worked because she would need to make daycare arrangements for her six year old. Claimant asked the facilities administrator to give her as much advance notice as possible if she was scheduled on any days other than her usual work days of Tuesdays, Thursdays and Saturdays so she could try to make daycare arrangements. Sometime in July 2018, claimant requested to have Saturday, August 18 off and the employer approved that request.

(4) On August 1, 2018, the facilities administrator sent by text and claimant received the employer's work schedule for August 2018. That schedule showed that, in addition to working on Tuesdays, Thursdays and Saturdays, claimant was expected to work on Wednesday, August 8; Wednesday, August 15; and Monday, August 20. In response to this text, claimant sent a text to the facilities administrator informing him that she did not think she would be able to work the extra shifts that were scheduled for her on August 8, 15 and 20. The facilities administrator responded by stating that "we'll talk about it later" and "we'll get it figured out." Audio at ~15:00.

(5) On several occasions between August 1 and August 7, claimant expressed concern to the facilities administrator that she would not be able to work the extra days in August for which she had been scheduled. In response, the facilities administrator told claimant that he would try to work with her. Audio at ~26:34. The facilities administrator also told claimant if she was not able to work on those days to just "call off" for those extra shifts, meaning that she should notify the employer that she would be absent from work that day. Audio at ~27:12. The facilities administrator did not tell claimant that she was required to show up on the extra work days for which she had been scheduled, that she would be discharged if she did not, or that she would be subject to other disciplinary sanctions if she did not work those extra shifts.

(6) On August 7, 2018, claimant "called off" for the extra shift scheduled for her on August 8. Audio at ~15:25. The facilities administrator did not impose any disciplinary sanctions against claimant for doing so.

(7) Sometime around the time she contacted the facilities administrator on August 7, claimant notified the employer that she was quitting work. Claimant decided to quit because she thought she would not be able to work any extra shifts for which she was scheduled. Although claimant told the facilities administrator that she was willing to work through the end of August, she and the facilities administrator agreed that Thursday, August 16 would be her last day.

(8) Claimant voluntarily left work on August 16, 2018.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant left work when she did because she thought the extra work shifts that the employer was scheduling would continue for some time into the future, and she would not be able to work those shifts due to the cost and difficulty of making daycare arrangements for her six year old. Audio at ~16:40. However, assuming that the extra shifts would continue to be scheduled, claimant candidly agreed that the facilities administrator had not told her she would be discharged, disciplined or penalized in any way if she “called off” for those extra shifts due to daycare exigencies, and she did not show that she was sanctioned for doing so on August 8. Audio at ~25:30. Indeed, it was the administrator who suggested this alternative to claimant if she was unable to work the extra shifts. Claimant did not show that she would be subject to any adverse consequences or cognizable harms if she declined to work the extra shifts and, as a result, did not show that the prospect of being scheduled for extra shifts constituted a grave circumstance for which she had no reasonable alternative other than to leave work. In addition, while claimant also contended that she did not want to “call out” from the extra shifts because it would leave the employer “short staffed,” upon questioning by the ALJ, claimant conceded that the employer likely would have been able to arrange for a “traveling tech” to work in her stead on days that she was absent. Audio at ~19:19, ~19:54. On this record, claimant also did not show, more likely than not, that any harm attributable to her would accrue to patients or other staff by her absence from work on the extra days for which she was scheduled.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-119261 is affirmed.

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

DATE of Service: December 21, 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 محكمة 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.

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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