

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1151

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73148). Claimant filed a timely request for hearing. On November 26, 2018, ALJ Shoemake conducted a hearing, and on November 30, 2018, issued Order No. 18-UI-120536, affirming the Department's decision. On December 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant submitted a written argument. Claimant's argument contained information, including several documents, that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information offered and received into evidence at the hearing and claimant's argument, to the extent it was based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Kaiser Foundation Hospitals employed claimant, last as an imaging manager, from July 30, 2007 to August 2, 2018.

(2) In approximately 2008, claimant experienced a stroke for which claimant required approximately one year of rehabilitation and which caused claimant some residual effects. Thereafter, the employer accommodated claimant's condition by allowing him to work 32 hours per week, instead of 40, every other week. The employer considered claimant to be a full-time employee.

(3) In 2017, TM was claimant's manager. Late that year and into 2018, claimant believed TM was pressuring him to retire, which he did not yet want to do, and as a result, claimant filed a grievance against the manager with the employer. The employer's human resources department investigated claimant's grievance but concluded it "could not substantiate" claimant's allegations that TM had attempted to pressure him into retirement. Audio Record ~ 45:30 to 46:00. When an employer human

resources representative (SH) met with claimant and asked what outcome he wanted from the situation, claimant responded that he wanted a “severance package.” Audio Record ~ 21:30 to 22:00.

(4) Over the ensuing months, SH obtained authorization for and then prepared more than one draft of a “Settlement Agreement and Release” based on discussions with claimant. On August 1, 2018, claimant agreed to sign the last version of the agreement which stated that in return for claimant’s work separation and release of claims, the employer’s records would designate claimant’s work separation as a “separation by mutual agreement”, effective August 2, 2018, and that the employer would pay claimant a designated lump sum amount and continue to provide employer paid medical and dental insurance for several months. Exhibit 1. Claimant notified SH by email that he would sign the agreement and added, “If I ever need to file for unemployment, I understand it would be on me to provide burden of proof.” Exhibit 1. Claimant signed the agreement and then forwarded it to SH for signature by the employer’s representative.

(5) On August 2, 2018, the employer executed the “Settlement Agreement and Release” that had been signed by claimant. Exhibit 1. That day, claimant quit work pursuant to the terms of the agreement. Had claimant not requested a “severance package,” continuing work with the employer would have been available to claimant after August 2, 2018.

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

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; 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, the separation is a discharge. OAR 471-030-0038(2)(January 11, 2018). Claimant’s work separation occurred because of a “mutual agreement” between claimant and the employer to end the employment relationship. Had claimant not suggested a “severance package” on May 10, 2018 and later executed a mutually agreed to “Settlement Agreement and Release”, claimant could have continued to work for the employer after August 2, 2018. Under the above cited administrative rule, the work separation was a voluntary leaving that occurred on August 2, 2018.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). The residual effects claimant experienced from a stroke he had in approximately 2008 may be considered a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for the employer for an additional period of time.

Viewing the record as a whole, claimant quit work when he did because he no longer wanted to work for the employer. Claimant did not dispute the employer’s evidence that the suggestion of a severance

package came from him rather than the employer and that when negotiating the settlement agreement with claimant, SH made it clear that the employer viewed the work separation as the result of a “mutual agreement” and that if claimant did not wish to sign it, he did not have to and he could continue his employment indefinitely. Although claimant asserted that his concern for his health was one of his motivations for entering into the agreement, he admitted he did not discuss that issue with his medical provider and did not dispute the employer’s evidence that he never mentioned that during their settlement discussions. Audio Record ~ 32:45 to 34:45. On this record, claimant failed to establish that no reasonable and prudent person with the characteristics and qualities of an individual with his impairment would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he re-qualifies under ORS 657.176(2) by receiving remuneration in subject employment of at least four times his weekly benefit amount.

DECISION: Order No. 18-UI-120536 is affirmed.

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

DATE of Service: January 10, 2019

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 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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