

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1165

Reversed & Remanded

PROCEDURAL HISTORY: On October 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144842). Claimant filed a timely request for hearing. On November 20, 2018, ALJ Wyatt conducted a hearing, and on November 28, 2018, issued Order No. 18-UI-120378, affirming the Department's decision. On December 18, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB in which he offered new information, including about the reasonability of claimant's belief that the foreman had discharged him the day he left work. EAB ordinarily does not consider new information presented for the first time on review unless the party offering it shows that the party was prevented from presenting it at hearing by factors or circumstances beyond its reasonable control, which claimant did not do. *See* OAR 471-041-0090(2) (October 29, 2006). However, given that EAB has remanded this matter for further development of the record as to the reasonability of claimant's belief that the foreman had discharged him, claimant may offer this new information at the hearing on remand and the ALJ should consider it if it is relevant to the issues on which this matter has been remanded. Claimant is advised that if he intends to offer his written argument or other documents as exhibits at hearing, he must comply with the instructions set out in the notice of hearing for the remand proceeding about offering documents into evidence, which include that the documents must be provided to the ALJ and the other parties before the hearing, or the ALJ will not consider them.

CONCLUSIONS AND REASONS: Order No. 18-UI-120378 is reversed and this matter is remanded for further development of the record.

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.

In Order No. 18-UI-120378, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ found as fact that claimant's foreman on September 14, 2018, who told claimant that he "no longer needed him," did not have the authority to discharge claimant, and that a reasonable and prudent person would have spoken with the employer's owner regarding other work assignments before voluntarily leaving work that day. Order No. 18-UI-120378 at 1-2. However, the ALJ did not develop the record sufficiently at hearing to support the conclusion that claimant voluntarily left work without good cause.

The employer's owner testified that the employer did not discharge employees because it needed the laborers, and the foreman who told claimant he was "no longer needed" claimant on September 14 did not discharge employees and did not have the authority to discharge employees. Audio Record at 24:39 to 24:55, 23:51 to 24:12. The owner also testified that he would have given claimant another work assignment if he had spoken with him before leaving work on September 14. Audio Record at 25:50 to 25:57. On remand, the ALJ must ask claimant why he believed the foreman (Rodrigo) had the authority to discharge him from work with the employer. The employer's owner testified that claimant worked for people other than Rodrigo and worked in the warehouse. The ALJ should inquire of the employer and claimant as to how claimant came to be assigned those jobs, including but not limited to inquiring who specifically assigned claimant to those jobs, whether claimant went to people other than Rodrigo in the past to ask for work assignments, and whether other people asked claimant to work with them.

Claimant testified that he had been fired before September 14, 2018 by the employer. The ALJ should inquire into the details of that incident or those incidents, including but not limited to who discharged claimant and how the alleged discharge or discharges occurred. The ALJ should inquire what was specifically stated to claimant on those prior occasions. The ALJ should ask the parties to recite specifically what was stated by the parties on September 14 as well, in an effort to compare the different alleged incidents of discharge. If claimant believed Rodrigo had discharged him in the past, the ALJ should ask claimant the details of that incident, including the reason for the alleged discharge, whether claimant spoke to an owner at that time and if so, what he said, and how claimant continued his employment with the employer or was rehired. The ALJ should inquire as to how the prior incident compared to the September 14 incident, and if so, whether it affected how claimant responded to Rodrigo's actions and statements on September 14.

Claimant also testified that he interacted with a person in the employer's office after Rodrigo told him he was "no longer needed" on September 14. Audio Record at 13:00 to 13:36. The ALJ should inquire more about that interaction, including but not limited to asking claimant everything he stated to the person and her responses. The ALJ should inquire whether claimant asked to speak with an owner at that time. The ALJ should ask if the office person told an owner about the interaction in the office, including whether she told an owner anything that claimant had stated. The owner alleged at hearing that claimant made statements about the garnishments to his paycheck on September 14, and the ALJ should ask claimant to respond regarding that testimony. Audio Record at 24:39 to 24:55.

The owner testified at hearing that he “did several attempts to get ahold of [claimant], through his wife and everything else and there was no call, no nothing, back.” Audio Record at 26:49 to 26:57. However, the owner also testified that he did not “try to track [claimant] down to figure out why he was not showing for work.” Audio Record at 35:40 to 36:50. The ALJ should inquire about this apparent conflict in the owner’s testimony, and clarify whether the owner attempted to contact claimant after claimant left work on September 14. If the owner attempted to contact claimant, the ALJ should inquire as to the details of those attempts.

The intent of this decision is not to constrain the ALJ only to making the inquiries set out above. In addition to asking the questions suggested, the ALJ should ask any follow-up questions he deems necessary or relevant to the whether or not claimant had good cause for leaving work. 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); *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant had good cause for leaving work, Order No. 18-UI-120378 is reversed, and this matter remanded for further development of the record.

DECISION: Order No. 18-UI-120378 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: January 17, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-120378 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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