

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1180

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 84818). Claimant filed a timely request for hearing. On December 4, 2018, ALJ Janzen conducted a hearing, and on December 6, 2018 issued Order No. 18-UI-120733, affirming the Department's decision. On December 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that included new information in the form of statements from claimant's former coworkers who allegedly experienced the same working conditions as did claimant before they left employment. However, claimant did not certify that she provided a copy of the argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). In addition, claimant did not show as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond her reasonable control prevented her from offering the new information at the hearing. For these reasons, EAB did not consider claimant's argument or the new information it offered when reaching this decision. As well, the statements were, at best, of only limited relevance to the issues before EAB since it appears that the individuals who made them left employment some months before claimant did, did not have first-hand knowledge of the workplace conditions as of the time claimant decided to leave work, and did not have first-hand knowledge of the impacts of those conditions as experienced by claimant. Had EAB considered the statements, the result in this case would have been the same.

FINDINGS OF FACT: (1) RMCC Cancer Center LLC employed claimant in its medical records department from January 13, 2015 until June 19, 2018.

(2) Beginning around 2017, there was significant, continuing turnover in claimant's department as claimant's then-coworkers retired, assumed new positions with the employer, or left for other reasons. Claimant's department was often short-staffed due to the need to recruit and train new employees for the positions that became open. As a result, claimant's workload increased. Although the employer offered

voluntary overtime to employees in an effort to address the problem of short-staffing, claimant's workload continued to be heavy. Claimant began to experience stress.

(3) On several occasions, claimant spoke to her supervisor about her heavy workload. Sometimes the supervisor would help claimant complete her work, or would assign other employees to help. The efforts of the supervisor did not significantly decrease claimant's ongoing workload. Claimant spoke with her supervisor's supervisor about her workload, but claimant's workload did not lessen. Although claimant knew of the employer's human resources department, she did not contact it about her heavy workload because she thought the individual who was the human resources manager was a friend of her supervisor.

(4) Sometime around late April 2018, the employer hired a new manager in the human resources department. The new manager was not a friend of claimant's supervisor.

(5) Sometime around late April to late May 2018, claimant began to vomit and experience diarrhea when she anticipated going to work, and while at work. Claimant attributed these symptoms to work-related stress. Claimant visited an urgent care facility to treat the symptoms. The treating physician prescribed anti-nausea medicine to claimant, but made no recommendations to her. Claimant did not consult with other health professionals. Although there was a new human resources manager, claimant did not raise her workload concerns with the new manager or inform the manager about the stress she was experiencing.

(6) On June 19, 2018, claimant notified the employer that she was leaving work effective immediately. Claimant left work because of her workload and stress.

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). For a claimant with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h), good cause is shown if a reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant's stated reason for leaving work was the stress she experienced from an increased workload. However, claimant did not try to resolve that stress through the employer's human resources department after speaking with her supervisor and the supervisor's supervisor did not achieve that result. Claimant contended she did not contact the human resources department because its manager was a friend of her supervisor, and she presumably believed that the manager was unlikely to help her for that reason. However, claimant agreed that the human resources manager was replaced in approximately April 2018 by a new manager who was not a friend of her supervisor. Claimant did not show that it would have been futile to have sought a resolution to the stressful circumstances she was experiencing through the former human resources manager since, without more, the fact that the human resources manager was

friendly with the supervisor does not establish that the manager would not have made reasonable efforts to address claimant's concerns. Nor did claimant show, more likely than not, that it would have been futile for her to have sought resolution through the new human resources manager. A reasonable and prudent person experiencing the stress and symptoms that claimant was experiencing would not have left work before she sought a resolution through the human resources department and determined whether it was willing and able to provide assistance. Claimant did not explore that reasonable alternative to leaving work before she decide to quit.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-120733 is affirmed.

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

DATE of Service: January 25, 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 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.

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