

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1181

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72727). Claimant filed a timely request for hearing. On December 13, 2018, ALJ Snyder conducted a hearing, and on December 17, 2018 issued Order No. 18-UI-121388, affirming the Department's decision. On December 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument in which she asserted that because claimant's Exhibit 1 was not included in the hearing testimony, she was not able to testify regarding all the evidence in the exhibit, including the gravity of her disabling health conditions and how the conditions affected her ability to request reasonable accommodations or other options. *See* Claimant's Written Argument. However, the record does not support claimant's assertion.

Although the ALJ did not admit Exhibit 1 until after the hearing, the ALJ considered Exhibit 1 in reaching a decision, as did EAB. The record shows that the ALJ allowed claimant to discuss the documents in Exhibit 1 during the hearing, and asked claimant repeatedly about how her health conditions and why she did not request accommodations from the employer. During the hearing, claimant explained the significance of her Benefits Planning Query and trial work period letters from the Social Security Administration (Audio Record at 21:26 to 22:36), and read into evidence the letter from her mental health provider (Audio Record at 14:57 to 15:37). *See also* Exhibit 1 at 5-6, 7, 8. In addition, the ALJ asked claimant how her disabilities were affecting her ability to continue working for the employer, and why claimant did not ask the employer for an accommodation. Audio Record at 15:43 to 15:53; 19:15 to 19:24. The ALJ also asked claimant if there was "anything" that made claimant feel uncomfortable requesting the accommodations that she needed. Audio Record at 36:24 to 36:30. Moreover, the ALJ asked claimant twice if there was anything else claimant had not had an opportunity to explain. Both times, claimant responded, "No." Audio Record at 27:35 to 28:05, 37:09 to 37:19.

In sum, EAB reviewed the hearing record in its entirety, and conclude that it shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as

required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). We also considered claimant's remaining arguments when reaching this decision.

FINDINGS OF FACT: (1) Heatherly Disability Representatives, Inc. employed claimant from November 21, 2017 until June 7, 2018 as a social security disability consultant.

(2) Claimant had major depressive disorder and an anxiety disorder since 2006. Exhibit 1. Claimant had been receiving social security disability benefits because of her disorders since 2007. Exhibit 1. Claimant's employment with the employer was part of a trial work period during which claimant was testing her ability to work.

(3) In early 2018, after her initial training period with the employer ended, claimant began experiencing anxiety symptoms because there were aspects of her job that she did not understand. She began to experience symptoms including fear, and difficulty concentrating and performing her work.

(4) Claimant met with her mental health provider repeatedly throughout her employment. She discussed the stress of her workplace environment with the counselor several times during sessions.

(5) During May 2018, the symptoms related to claimant's mental health disorders became worse than they had been in the preceding four months. Claimant had difficulty sleeping and eating, and had panic attacks. Claimant saw her doctor more frequently during May. Claimant's doctor changed claimant's medication to address claimant's changing health concerns.

(6) Claimant never told her employer that she was experiencing health effects due to stress from her work environment or asked for an accommodation from the employer to try to improve her working conditions. Claimant did not request a leave of absence to help alleviate her symptoms.

(7) On May 31, 2018, claimant sent the owner an email stating that she planned to resign on June 15, 2018 unless she and the employer agreed to another date. Claimant and the employer mutually agreed that claimant's employment would end on June 7, 2018. Claimant voluntarily left work on June 7, 2018 because the stress of her working environment increased her anxiety and depressive symptoms.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that 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 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had major depressive disorder and an anxiety disorder, which were permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

Claimant quit work because her working environment was causing her to experience increased symptoms of her anxiety and depressive disorders. It is unlikely that a leave of absence was a reasonable alternative for claimant because she would have faced the same conditions that aggravated her medical conditions when she returned to work. However, claimant did not make any requests for accommodations or tell the employer she was experiencing health symptoms. At hearing, claimant described a number of requests for accommodations that might have reduced the stress of her working environment: changes to how the employer gave claimant information, no interruptions or pop-up messages while claimant performed certain activities, clarity in problem-solving and directions, a closed office door to reduce noise, an alternate schedule, and a shift in responsibilities. Audio Record at 17:33 to 18:10. We infer that the employer more likely than not would have granted some of these accommodations because they would not have involved significant expense or operational difficulty.

Claimant asserted that she did not tell the employer about any of her symptoms or ask for an accommodation because she felt that the information would not remain confidential within the small workplace of only five employees where the owner was the mother of claimant's supervisor. Audio Record at 16:44 to 20:20. However, claimant recounted no incidents to show that the employer had failed to maintain the confidentiality of employee information in the past, or that it had used such information in an inappropriate or unfair manner. Claimant testified that she did not feel comfortable asking for an accommodation because she felt "intimidated" by the owner, whom she perceived as having an "uneven temperament." Audio Record at 36:34 to 37:07. Even assuming the owner's temperament was unpredictable, claimant did not provide a plausible reason for why she would not have discussed her concerns with her supervisor instead of the owner, or why the owner's temperament would prevent claimant from requesting an accommodation. Claimant did not describe mistreatment by the owner, her supervisor or any of her coworkers.

Claimant also testified that her symptoms were so severe that it was futile to request accommodations. Audio Record at 20:23 to 20:55. The letter from claimant's medical provider stated that he and claimant had discussed that claimant had "no alternative" but to quit. Exhibit 1. However, that assertion is undermined by the apparent contradiction between the letter and the record where the letter refers to "accommodations and options" that claimant had pursued at work, when the record shows that claimant did not pursue any accommodations at work. Exhibit 1. Thus, claimant and her medical provider apparently discussed potential reasonable accommodations or options that she could have pursued at work. Nor does the letter state or the record otherwise show that claimant's doctor advised her to quit when she did.

In sum, the record fails to show that requesting accommodations such as those identified by claimant during the hearing was not a reasonable alternative to her quitting work when she did. Claimant therefore failed to establish that she quit work with good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 18-UI-121388 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

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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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