

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0058

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80207). On November 7, 2018, the Department served notice of an administrative decision concluding claimant voluntarily left work without cause (decision # 145140), which superseded decision # 80207. On November 13, 2018, claimant filed a timely request for hearing on decision # 145140. On December 6, 2018, ALJ Snyder conducted a hearing, and on December 11, 2018, issued Order No. 18-UI-121091, concluding claimant voluntarily left work without good cause. On December 31, 2018, Order No. 18-UI-121091 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On January 14, 2019, claimant filed a late application for review with EAB.

FINDINGS OF FACT: (1) St. Charles Health System, Inc. employed claimant as a certified medical assistant from March 2017 to July 17, 2019.

(2) In May 2018 claimant took a short term disability leave of absence related to her pregnancy. Her due date was in June 2018 and she was expecting twins. Claimant intended to take time off work before and after her twins' birth, and place her children in daycare and return to work on July 17, 2018.

(3) Prior to her children's birth, claimant secured daycare for them with her mother-in-law. Claimant's mother-in-law then began watching another infant in a neighboring city. Claimant's mother-in-law was not capable of caring for claimant's infants and the other infant at the same time.

(4) Claimant did not have any other family members available to provide free care for her children while claimant worked. Claimant could not afford to pay for infant care for her children because the cost of paying for childcare would exceed the cost of her mortgage.

(5) Claimant talked to the employer about her options. The employer said claimant could go on unpaid protected family leave from July through October 2018. Claimant did not think that would work for her

because the leave would be unpaid, and because by October she would still be unable to afford to pay for childcare. Claimant also lacked prospects for obtaining free childcare. Claimant decided to quit work because she needed to care for her infant children, effective July 17, 2018.

(6) Around the time that claimant decided to quit work she also had the idea of opening a daycare in her own home so she could earn money while caring for her own infants. She took steps toward that end but did not ultimately open a daycare.

(7) On December 14, 2018, claimant received notice of Order No. 18-UI-121091. On December 15, 2018, claimant attempted to file an application for review with EAB by mailing an application for review form. For unknown reasons, claimant's application for review never arrived at EAB.

(8) On January 10, 2018, claimant called EAB to inquire about her application for review and learned that EAB had not received it. On January 14, 2018, claimant faxed an application for review to EAB, and EAB received the fax the same day.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. We disagree with the ALJ and conclude that claimant voluntarily left work with good cause.

Late application for review. ORS 657.270(6) requires that parties file applications for review within 20 days after the ALJ's order was mailed. Although claimant attempted to file her application for review on time, she did not successfully transmit to or file an application for review with EAB until after the 20-day period expired, making her application for review late.

ORS 657.875 provides that the 20-day deadline may be extended a reasonable time upon a showing of good cause. "A reasonable time" is seven days after the circumstances that prevented a timely filing ceased to exist; "good cause" means factors or circumstances beyond the applicant's reasonable control prevented a timely filing. OAR 471-041-0070(2) (February 18, 2012).

Claimant filed her late application for review within four days of the date the circumstances that prevented a timely filing ceased to exist. Her application was filed within a reasonable time. The circumstance that prevented a timely filing was that her initial attempt to file the application for review by mail was unsuccessful for unknown reasons. The fact that mail she deposited with the U.S. Postal Service did not reach EAB, the intended recipient, was more likely than not outside claimant's reasonable control. Claimant's late application for review is therefore allowed.

Voluntary leaving. 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.

The ALJ wrote that claimant left work when she did “because she intended to open a childcare facility in her home.” Order No. 18-UI-121091 at 2. The ALJ concluded that claimant did not have good cause to quit work for that reason because she had the reasonable alternative of using protected family leave to obtain additional time off work to establish childcare for her infants instead of quitting when she did. *Id.* We disagree.

Claimant did not leave work because she intended to open a childcare facility, she left work because she had two infant children that required care, she was unable to find free childcare, and the cost of paying for her children to go to daycare exceeded her means.¹ She therefore quit to provide necessary care for her children which was a grave situation.

Taking additional leave that was unpaid was not a reasonable alternative at the time claimant quit work because she had no prospects at the time of securing free childcare. Taking unpaid leave also would not help her afford paid childcare or improve her chances of obtaining paid childcare. Claimant did not have any other reasonable alternatives to quitting at the time she left work.

Claimant quit work because of a situation of such gravity she had no reasonable alternative but to quit work when she did. She is therefore not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-121091 is set aside, as outlined above.

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

DATE of Service: February 14, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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¹ We also note that if claimant had actually left work because of her desire to begin a self-employment venture like opening a daycare, the applicable standard would not be OAR 471-030-0038(4), which the ALJ applied, it would be OAR 471-030-0038(5)(b)(G), which states that quitting work without good cause includes quitting work for self-employment.



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 desisyon.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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 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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