

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0070

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 # 144912). Claimant filed a timely request for hearing. On December 19, 2018, ALJ Snyder conducted a hearing, and on December 27, 2018 issued Order No. 18-UI-121835, affirming the Department's decision. On January 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify that she provided a copy of it to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). For this reason, EAB did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Logisticare Solutions LLC employed claimant as a customer service representative at a call center from August 22, 2018 until September 10, 2018.

(2) Claimant experienced migraine headaches that were brought on by depression and stress. Claimant took medicine for the headaches.

(3) After hire, claimant received two weeks of classroom training. After the classroom training, claimant was assigned to the floor to answer phone calls for two weeks while being overseen by job coaches and team leads who also were assigned to the floor. The coaches and leads were available to consult with claimant and the other trainees if they needed assistance in handling the calls they received.

(4) On Thursday, September 6, 2018, claimant began her first day of training on the floor. That day, claimant developed a migraine headache and went home early. On Friday, September 7, 2018, claimant again developed a migraine headache while answering phones on the floor and went home early.

(5) By September 10, 2018, claimant concluded that the migraine headaches she had experienced while training on the floor occurred because she felt ill-prepared to answer phones, which she thought resulted

from inadequate classroom training. On September 10, claimant reported for work on the floor and told a trainer that she needed to speak with a supervisor. The trainer took her to meet with a supervisor. Claimant told the supervisor that she felt inadequate when answering customer calls on the floor and asked the supervisor if she could have additional classroom training. The supervisor told claimant that she could not. Claimant asked the supervisor if she could be assigned to clerical work rather than continuing to answer phones. The supervisor told claimant that there were no clerical positions available at that time. However, the supervisor told claimant that the employer was willing to assign a job coach or a team lead to sit side-by-side with her as she answered calls to assist her and provide additional training.

(6) After speaking with the supervisor on September 10, claimant concluded that the side-by-side training would create too much pressure for her because a customer would be on the phone at the same time the job coach or the team lead would be helping her. That day, claimant notified the employer that she was leaving work.

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). Claimant had migraine headaches, which is assumed to constitute 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 her employer for an additional period of time.

Claimant did not suggest that she left work because the migraine headaches she experienced were substantially undermining her health. On this record, it appears that claimant left work when she did because she did not think that she was ready to handle phone calls alone and she felt stress as a result. However, claimant had reasonable alternatives to leaving work when she did. First, claimant was still in training while she was answering calls on the floor and, rather than independently having to determine how to deal with particular calls, the job coaches and team leads overseeing the work of the trainees were available to assist claimant upon request if she felt inadequate. Second, if claimant wanted or thought she needed additional assistance, the employer was willing to assign a job coach or a team lead to work side-by-side with her and provide one-on-one assistance as she answered calls. A reasonable and prudent person who experienced migraine headaches would not have left work before determining that consulting with job coaches and team leads on the floor, as needed, or receiving one-on-one, side-by-side mentoring while on the phone did not alleviate her feelings of inadequacy or diminish the frequency or severity of the migraines she experienced. Because claimant did not pursue reasonable alternatives before leaving work, claimant did not show good cause for doing so.

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

DECISION: Order No. 18-UI-121835 is affirmed.

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

DATE of Service: February 13, 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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