

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0242

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 83608). Claimant filed a timely request for hearing. On February 11, 2019, ALJ M. Davis conducted a hearing, and on February 12, 2019 issued Order No.19-UI-124562, affirming the Department's decision. On March 4, 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). The argument also contained information that was not part of the hearing record, and claimant did not show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090(2) (October 29, 2006). For those reasons, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Riddle Laminators employed claimant as a caregiver from October 22, 2006 until November 30, 2018. The employer was family owned and principally operated a wood products mill. The employer employed claimant to provide care for the co-owners' family members. The owners were two sisters.

(2) The employer initially hired claimant to provide care for the owners' father and some non-medical assistance to the owners' mother. The father had survived a severe stroke and was confined to a wheelchair. Claimant did not have a state-issued license or certification to provide caregiving services and none was required. The owners hired a hospital-trained and licensed caregiver to oversee their father's care. The hospital-trained caregiver trained claimant and the other caregivers, and implemented processes by which the caregivers kept records that documented the father's care and treatment. On some occasions, the father's caregivers attended meetings to exchange information about the father's condition, care, and treatment.

(3) In 2010, the owners' father died. At that time, the employer laid off the hospital-trained caregiver. The employer continued claimant's employment, generally to provide non-medical assistance and companionship services to the mother. Initially, the mother's health was good. Over time, the mother's health deteriorated. Claimant began taking the mother to medical appointments or accompanying the owners when they took their mother.

(4) Around 2016, one of the owners assumed principal responsibility for taking the mother to medical appointments and often did not include claimant. As of this time, claimant became concerned that she and the other caregivers were not being kept adequately informed of the mother's medical condition and the treatment and medicines she was receiving. Claimant thought that the owners should require regular meetings of the mother's caregivers to ensure effective communication about the mother's medical needs and condition.

(5) Around this time in 2016, one of the owners took the mother to a kidney specialist. Claimant did not attend the appointment. The owner later told claimant that the mother's potassium levels were elevated and the doctor had advised the caregivers to investigate the cause. Claimant did not understand the owner to tell her what the doctor had diagnosed or to indicate how serious the mother's condition was. Later, claimant came upon some records from the kidney specialist stating that the mother had Stage III kidney disease. Claimant contacted the owner, who confirmed the doctor's diagnosis and told claimant not to discuss it with the mother. Claimant thought it was inappropriate of the owner initially not to inform the caregivers of the mother's diagnosis and to instruct claimant not to mention the diagnosis to the mother. Claimant also thought the owners did not adequately follow up with the kidney specialist about treating the mother's kidney disease, although the owner continued to take her mother to appointments with the mother's primary care physician.

(6) In 2017 and 2018, claimant thought the mother was experiencing memory loss, confusion and hallucinations. In approximately August 2018, claimant accompanied one of the owners and the mother to a doctor's appointment when these issues were discussed. The doctor commented that a CT scan could be performed to investigate whether there was an underlying organic cause for the mother's symptoms or the mother could be tapered off some of the medicines she took to determine whether they were causing the symptoms. The owner told the doctor she was concerned about her mother's reaction to having the CT scan. It was decided not to have the CT scan and to taper off the anti-depressant and sleep inducing medicines the mother was taking.

(7) In approximately October 2018, a CT scan was performed on the mother because eliminating the target medicines had not improved the mother's cognition. The owner initially reported to claimant that the mother's scan did not show any abnormalities. However, claimant told the owner that the mother's cognition still had not improved despite the tapering of medicines. The owner took the mother to another doctor's appointment and later reported to claimant that the doctor now found an abnormality in the CT scan. The owner gave claimant a prescription that the doctor had provided for the mother. Claimant did not perceive that the owner told her why the doctor had prescribed the medicine for the mother or what the doctor's diagnosis was. Claimant researched the prescribed medicine on the internet and learned that it was used to treat Alzheimer's dementia. Claimant thought it was not appropriate of the owner not to inform her of the doctor's diagnosis or to expect her to administer a medication without knowing its purpose. Claimant thought the confusion over interpreting the CT scan indicated that the owner was not adequately monitoring her mother's care.

(8) On November 9, 2018, claimant notified the employer that she was quitting work effective November 30, 2018. Claimant decided to quit because she thought there was a lack of communication between the owners and the caregivers about the mother's condition and treatment.

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). 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.

Claimant appeared genuinely frustrated over what she perceived as lack of information from the owners about their mother's condition, her doctor's diagnoses and recommended courses of treatment. Although claimant appeared to contend that not providing comprehensive information about the mother's medical condition was generally irresponsible on the part of the owners, she did not identify any actual harms, or likely future harms that resulted to herself, the other caregivers or the owners' mother from it. Notably, claimant did not identify any inadequate care that the mother had received or was likely to receive due to the owners' allegedly poor communication or the failure to exchange information among the caregivers.

With respect to the specific incidents claimant recounted as showing poor communication, the owners' recollections differed from that of claimant. The owner with whom claimant principally dealt with thought claimant knew of the kidney specialist's diagnosis since she had attended several appointments with the specialist, the mother's condition was age-related and little could be done for it, and claimant was not asked to conceal the diagnosis from the mother because mother had heard the diagnosis while in the doctor's office. Transcript at 33, 35. With respect to the CT scan, the owner testified that she and the doctor both agreed to first try the tapering before proceeding to the scan, and that the doctor was the source of the confusion about the results of scan since he changed his evaluation of it. She also believed that she had told claimant that the medication prescribed by the doctor was to improve her mother's memory. Transcript at 32, 33. The owner further testified that she was unaware that claimant had concerns about the care or the medications that were provided to her mother. Transcript at 31, 32. The owner emphatically denied that the mother ever received inadequate care. Transcript at 43. Because there is no reason in the record to doubt the credibility and testimony of either party's witnesses in this matter, the conflicts in the evidence must be resolved against claimant since she had the burden of persuasion in this matter. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Based on burden of proof principles and given the employer's rebuttal, claimant failed to demonstrate, more likely than not, that her circumstances were grave at the time she quit and she had no alternative other than leave work.

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

DECISION: Order No. 19-UI-124562 is affirmed.

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

DATE of Service: April 5, 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 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 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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