

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0340

Reversed & Remanded

PROCEDURAL HISTORY: On February 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant within 15 days of a planned voluntary leaving that was not for good cause (decision # 122028). Claimant filed a timely request for hearing. On March 20, 2019, ALJ Janzen conducted a hearing, and on March 25, 2019 issued Order No. 19-UI-126959, concluding that claimant voluntarily left work without good cause. On April 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pilot Travel Centers LLC employed claimant as a manager-trainee from November 27, 2019 until January 26, 2019.

(2) The employer had a policy prohibiting, among other things, the use and sale of illegal substances and marijuana in the workplace. Sometime around early January 2019, an employee told claimant that two other employees had used methamphetamine in the showers on the premises earlier that day. Employees also told claimant that other employees were selling methamphetamines at the fuel pumps during the night shift. Soon after, claimant informed the general manager of the reports she had received. The general manager told claimant that since she had not witnessed the reported activities, he would not take action on her hearsay report and that he could not give drug tests to employees. However, the general manager reported claimant's concerns to the employer's corporate office. Claimant did not tell the human resources department that she had received reports of illegal drug use in the workplace.

(3) Throughout claimant's employment, claimant was required to take her father-in-law to physician's appointment. These appointments were scheduled about a month in advance, and the employer was usually able to adjust claimant's work schedule to accommodate the father-in-law's medical appointments. In early February 2019, claimant's work schedule was going to change to 2:00 p.m. to midnight. Claimant did not feel comfortable working 2:00 p.m. to midnight. Claimant was under stress due to having to take her father-in-law to medical appointments and the alleged drug use at the work place.

(4) On approximately January 24, 2019, claimant notified the general manager that she was quitting work because she needed to be available to take her father-in-law to his medical appointments. Claimant told the general manager that she would work for an additional week and half, which would have been until approximately February 4, 2019. The general manager told claimant that she could take January 25, 2019 off from work, but he needed her to work on January 26, 2019. The general manager told claimant that January 26 could be her last day and claimant agreed.

(5) On January 26, claimant voluntarily left work. Sometime after she left work, claimant reported to the employer's human resources department that she had been concerned about the use and sale of illegal drugs in the workplace during her employment. The employer interviewed several employees and only one stated that he or she suspected illegal drug use or sales on the premises.

CONCLUSIONS AND REASONS: Order No. 19-UI-126959 is reversed and this matter is remanded for further development of the record.

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.

In Order No. 19-UI-126959, it was concluded that claimant voluntarily left work without good cause. The order reasoned that claimant did not show either that her need to take the father-in-law to his medical appointments or her concerns about the use and sale of methamphetamines in the workplace were situations of gravity. Order No. 19-UI-126959 at 2-3. However, the record is not sufficiently developed to support these conclusions in Order No. 19-UI-126959 and additional inquiry is needed.

On remand, a sufficient inquiry should be made to identify why precisely claimant quit work and whether she did so in part due to the reports she received about illegal drug activity in the workplace. Specifically, it should be determined what was claimant's reason to quit work, was it the upcoming change in her work schedule, her ability to transport her father-in-law to medical appointments, the alleged methamphetamine activity in the workplace, the general manager's alleged unwillingness to take steps to prevent that activity, his unwillingness to administer drug tests to all employees, or some combination of these reasons. It should be determined if any reason(s) existing alone, without the presence of the others, would have been sufficient to cause claimant to quit work when she did. If it appears that a combination of reasons existed, and there was no single proximate cause to claimant's decision to leave work, a sufficient inquiry should be made to determine the respective weights of each reason in claimant's decision to leave work. Inquiry should further be made to determine what exactly claimant told the general manager about her reasons for quitting work on that January 24, 2019 and whether claimant specifically mentioned to the general manager that a reason she was quitting work was the alleged use and sale of methamphetamines in the workplace. If claimant did not mention on January 24 that the alleged illegal drug activity in the workplace was a reason that she was leaving work, an

inquiry should be made about why she did not. Inquiry should additionally be made to determine if, when claimant spoke to the general manager in early January 2019 about allegations of methamphetamine activity in the workplace, she did or said anything to indicate how serious she considered the situation or that she might quit if the employer did not take action to stop it.

To the extent that claimant left work due to the change in her work schedule, inquiry should be made about why that constituted a situation of gravity for claimant. Specifically, it should be explored if and how the new schedule would interfere with claimant transporting her father-in-law to medical appointments, caring for him or any other different negative effects it would have on claimant. It should also be explored if claimant believed that the employer would not have been able to accommodate claimant's need to transport the father-in-law under the new schedule as it had under the old schedule and, if so, the basis for that belief.

To the extent that claimant left work due alleged methamphetamine activity, the record should also be developed about why two hearsay reports of methamphetamine activity, that were not corroborated, constituted a grave situation for claimant, what harms she feared would result to her if the reports were true and why she quit before determining if the reports were true. The record should be further developed to determine the degree to which the hearsay reports about the methamphetamine activity that claimant received were reliable. Exploration should be made of the reasons, if any, that claimant did not investigate the hearsay reports about methamphetamine activity that she received, speak to the employees allegedly involved, and attempt to personally observe if methamphetamine activity in the workplace was ongoing and the identit(ies) of any employees involved before she decided to quit. Inquiry should be made of claimant to determine if she contacted law enforcement about alleged methamphetamine activity in the workplace and why she did or did not do so.

Additional inquiry should be made to determine when the general manager reported claimant's concerns about methamphetamine activity in the workplace to the corporate office, whether it was before or after claimant quit work, what exactly the general manager told the corporate office, and whether claimant was informed of the general manager's report to the corporate office. Additional inquiry is also necessary to determine whether the employee statements that the general manager referred to during the hearing were taken as a result the general manager's report to the corporate office or claimant's report to the human resources office. Inquiry should also be made about what actions, if any, the general manager or employer took after gathering statements from employees about alleged methamphetamine activity in the workplace and why it did or did not take further action on the reports.

It should also be further explored why, during her employment, claimant did not make a report to human resources of the hearsay reports she had received about methamphetamines in the workplace because she thought it would be futile or useless to do so and, if so, why she thought that.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant voluntarily left work for good cause, Hearing Decision 19-UI-126959 is reversed, and this matter remanded for further development of the record.

DECISION: Order No. 19-UI-126959 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 1, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-126959 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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 الإستئناف 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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