

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0392

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161147). Claimant filed a timely request for hearing. On April 10, 2019, ALJ S. Lee conducted a hearing, and on April 18, 2019 issued Order No. 19-UI-128472, affirming the Department's decision. On April 22, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant submitted written argument. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing, and claimant's argument only to the extent it was based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Consonus Pharmacy Services LLC employed claimant as an on-call, physical therapy assistant from January 25, 2019 to February 4, 2019.

(2) Prior to working for the employer, claimant had worked as a physical therapy assistant for a previous employer. However, while in that position, claimant received excessive criticism from his supervisor about his documentation concerning patient files that caused him extreme anxiety and induced him to quit. Before quitting that previous position, claimant did not seek a medical or mental health consultation or treatment for his anxiety.

(3) After accepting his position with the employer and while attending his initial, on-site work orientation on Friday, January 25, 2019, during which he treated one patient, claimant had a "PTSD type of reaction from a work environment [like] I had had a year before." Audio Record ~ 11:00 to 11:50. That weekend, claimant experienced extreme anxiety and sleepless nights in thinking about the orientation and sent an email to his recruiter that she contact him. She called him on Monday, during which he reported his experience and reaction and explained his concern about his ability to work in the

employer's environment. Claimant asked if he could shadow another employee for a period of time to possibly alleviate his concerns. The recruiter agreed to discuss his request with the employer and get back to him later that day.

(4) Claimant did not receive a call from the recruiter on Monday, January 28, 2019 or during the remainder of the week during which he continued to have difficulty sleeping. On Monday, February 4, 2019, claimant contacted the employer and resigned his position. Before resigning, claimant did not contact the recruiter about whether she had spoken to the employer about his concerns or shadow request, speak with the employer's human resources staff about the possibility of a different work setting, position or accommodation, or contact a medical provider for a consultation and possible treatment for his anxiety.

(5) In April, 2019, claimant consulted with a physician about his anxiety and began receiving treatment for what was diagnosed as an adjustment disorder. Exhibit 1.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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) (December 23, 2018).¹ 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 the employer for an additional period of time.

Claimant testified that he quit work with the employer because of the anxiety the orientation caused him and to protect his health. Audio Record ~ 14:15 to 16:15. However, claimant also testified that he had asked the recruiter on January 28 if she would speak to the employer about the possibility of providing some support such as an opportunity to shadow another employee for a period of time to determine if he would obtain a level of comfort with the position that would enable him to continue. Audio Record ~ 14:45 to 16:45. Moreover, at the time claimant quit work, claimant had not yet seen a medical provider about his anxiety or possible treatment solutions for his condition that might have enabled him to continue. And, despite having the phone number and email address for his recruiter and contact information for his employer, had claimant not contacted either to follow up on his original inquiry or ask for other assistance, given his anxiety, in performing the duties of an on-call physical therapy assistant. Viewed objectively, those alternatives were reasonable. And given that the recruiter had immediately returned his initial call and demonstrated a willingness to explore claimant's concerns and

¹ Claimant did not seek a consultation or treatment for his anxiety condition until after resigned his position with the employer. Accordingly, he was not able to establish that his anxiety or adjustment disorder was a permanent or long-term impairment as defined at 29 CFR §1630.2(h). We therefore analyzed claimant's decision to quit work using the standard of a reasonable and prudent person without such impairment. Even if we had concluded otherwise, the outcome of this decision would have remained the same because, for the reasons explained herein, a reasonable and prudent person with the characteristics and qualities of an individual with an anxiety or adjustment disorder condition would not have quit work under the circumstances claimant described without pursuing reasonable alternatives to quitting work.

request with the employer, claimant did not show that it would have been unreasonable or futile to pursue the matter with either party.

For those reasons, we conclude that claimant voluntarily left work without good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits based upon his work separation.

DECISION: Order No. 19-UI-128472 is affirmed.

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

DATE of Service: May 29, 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

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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