

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0400

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause decision # 63144). The employer filed a timely request for hearing. On April 10, 2019, ALJ Snyder conducted a hearing, and on April 18, 2019 issued Order No. 19-UI-128444, reversing the Department's decision. On April 22, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Tigerlights LLC employed claimant as a worker in its shipping and receiving department from February 11, 2019 until February 13, 2019.

(2) Working in the shipping and receiving was physically demanding. The job required claimant to pack and unpack boxes, and lift boxes up to and lower them down from overhead shelves.

(3) On February 11, 2019, claimant's first day of work, claimant began to experience shoulder pain as the workday progressed. The pain did not stop. The pain continued through the night.

(4) By the morning of February 12, 2019, claimant's shoulder pain had not subsided. Claimant reported for work and the pain continued. Claimant took ibuprofen during her lunch break in an attempt to relieve the pain. The ibuprofen did not stop the pain. Claimant's shoulder pain continued unabated through the workday. Claimant noticed that overhead lifting aggravated the pain. The pain continued throughout the night, after claimant left work and went home.

(5) By the morning of February 13, 2019, claimant's shoulder pain still had not stopped. Before her scheduled start time that day, claimant sent a text message to the owner. Claimant told the owner that she was having shoulder pain from lifting items at work and would not be at work because she was going to try to see her doctor. Claimant contacted her doctor's office, but learned that the doctor was out sick. However, claimant obtained access to her medical records and saw that her doctor had diagnosed tendonitis of the shoulder when she saw the doctor in September 2018. Before that day, claimant did not know that her doctor had previously diagnosed her with tendonitis.

(6) After looking at her medical records and concluding that the pain she was experiencing at work was the result of an aggravation of tendonitis, claimant decided she would quit work. Claimant did not think she was able to tolerate working with the level of pain she was experiencing, and did not think her job could be changed to eliminate the overhead lifting that caused her tendonitis to flare. On February 13, 2019, claimant sent a second text message to the owner stating that she had tendonitis and she was not able to perform her job duties. Claimant then apologized and stated that she had to quit work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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) (December 23, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had tendonitis, which from her unchallenged description at hearing appeared to be 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.

Order No. 19-UI-128444 concluded that claimant did not have good cause for leaving work due to the shoulder pain she experienced. The Order reasoned that, while the pain may have created a grave circumstance for claimant, she did not explore reasonable alternatives before quitting. In particular, the Order stated that “claimant could have asked the [e]mployer whether it could make any accommodations for [c]laimant to reduce the amount of overhead lifting that was required” and “[c]laimant also had the alternative of making an appointment to see her doctor to ask whether there were specific movements she could avoid, or other treatments that may have allowed claimant to continue her employment.” Order No. 19-UI-128444 at 2. The Order is correct that claimant’s circumstances were grave, but incorrect in concluding that reasonable alternatives existed that claimant should have pursued before deciding to leave work.

The degree of pain that claimant was experiencing at work due to the aggravation of her tendonitis was not disputed. From claimant’s description, that the pain was significant and did not end after her workday ended. Based on this record, it appears that a reasonable and prudent person with tendonitis likely would have concluded that the level of pain she experienced from being required to perform lifting at work was a grave circumstance. The next issue to be considered that of reasonable alternatives to leaving work.

While the Order stated that asking the employer to make the job accommodations was a reasonable alternative to quitting, the record strongly suggests it was not. According to the owner, an essential part of claimant’s duties as a shipping and receiving clerk was lifting packages; given the nature of the work available at the employer’s business, it would not have been feasible for the employer to offer a lifting accommodation to claimant since it would have altered the very nature of the job that claimant was hired

to perform. Audio at ~11:49. Asking for accommodation therefore would more likely than not have been futile, and as such was not a reasonable alternative for claimant to quitting work.

Similarly, there is an insufficient basis in the record to conclude that consulting with claimant's doctor was a reasonable alternative to claimant leaving work. There is insufficient evidence in the record from which to infer that such a consultation would have resulted in the elimination of claimant's pain while lifting, or significantly reduction in pain. For example, the record does not suggest that consulting with a doctor would have healed claimant's tendonitis, or resulted in instructions about how to lift items at work without experiencing pain. There also was an insufficient basis from which it might reliably be inferred that had claimant consulted with her doctor she likely would have been informed of the existence of "other treatments" that would have allowed her to avoid or overcome her pain while continuing to work. As above, an alternative that is based on speculation or an unverified hypothetical is insufficient to show that it is an alternative that is reasonably available to claimant in lieu of quitting. On this record, there is an insufficient basis to conclude that a consultation with her doctor was a reasonable alternative to quitting.

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

DECISION: Order No. 19-UI-128444 is set aside, as outlined above.

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

DATE of Service: May 29, 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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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

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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