

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0424

Reversed & Remanded

PROCEDURAL HISTORY: On March 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 134501). Claimant filed a timely request for hearing. On April 18, 2019, ALJ Snyder conducted a hearing, and on April 26, 2019 issued Order No. 19-UI-128913, affirming the Department's decision. On April 30, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider new information offered for the first time on review if the party offering it shows that factors or circumstances beyond its reasonable control prevented the party from presenting the information at hearing. The new information that claimant offered by way of his argument generally chronicled the sources of the stress he experienced in the workplace and why he considered it overwhelming. While claimant did not offer this document into evidence during the hearing, that an adequate inquiry into the reasons why he left work would not be made was a factor or circumstance beyond his reasonable control. For this reason, claimant's written argument was considered.

EAB has marked claimant's written argument as EAB Exhibit 1 and admits that exhibit into the hearing record. A copy of EAB Exhibit 1 is included with this decision. Any party who objects to the admission of EAB Exhibit 1 must submit any objections to this office in writing, setting forth the basis for the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received and sustained, EAB Exhibit 1 will remain a part of the record. As appropriate, EAB Exhibit 1 should be used as a basis for further inquiry of the parties at the hearing on remand.

FINDINGS OF FACT: (1) Ingredion Incorporated employed claimant in its blends department from approximately 2016 until January 24, 2019. The employer's predecessor had employed claimant from approximately 2009 until the predecessor was acquired by the employer in 2016.

(2) Sometime before approximately October 2018, the employer made claimant a lead worker in the blends department. Claimant did not like working in a lead position. He considered the position to be too stressful and overwhelming. In approximately October 2018, the employer allowed claimant to step down from the lead position and continue working in blends as a crew member.

(3) Sometime around January 11, 2019, claimant learned that the person who had succeeded him as lead in the blends department had given notice that he was going to quit as of approximately January 25, 2019. As a result, claimant met with the production manager and asked the manager if the employer planned to have him return to the lead position in the blends department. Claimant told the manager that he did not want to be the lead in blends and asked if the manager would transfer him to the production department. The manager told claimant that, regardless of his wishes, the employer was going to assign him to the lead position in blends until it could find a replacement for the lead who was departing. The manager told claimant that, without him and his experience, the blends crew was too small and inexperienced to allow him to transfer at that same time the current lead was departing. The manager told claimant that he might be able to transfer to the production department after a replacement lead was hired.

(4) Claimant left work on January 24, 2019, one day before the then-current lead in the blends department quit work. Claimant left work because he did not want to work as lead because he thought it would be too stressful and overwhelming.

CONCLUSIONS AND REASONS: Order No. 19-UI-128913 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 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). For an individual with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h), good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities such individual would leave work.

Order No. 19-UI-128913 concluded that claimant voluntarily left work without good cause. The Order reasoned that claimant was only expected to be in the lead position for a “short” and “temporary” period, and that he “would not have needed to cover the lead position until the end of the current lead worker’s two week notice period, two weeks after claimant left work on January 24, 2019.” Order No. 19-UI-128913 at 2. Based on that reasoning, the Order determined that claimant failed to show that he faced a situation so grave that he had no reasonable alternative but to leave work, as required to establish good cause for leaving work for the purposes of unemployment insurance benefits. Order No. 19-UI-128913 at 2. However, the record was not sufficiently developed to determine whether claimant had good cause for leaving work when he did, and Order No. 19-UI-128913 therefore must be remanded for additional inquiry.

At the outset, it appears from the record that claimant left work the day before the current lead departed, and not two weeks before that as was stated in Order No. 19-UI-128913 at 2. Audio at ~12:34. The record should be clarified to determine when the lead left work, when claimant left work, and the number of days in between.

With respect to why claimant felt he could not work even temporarily as lead, he referred to the position as too “stressful” and “overwhelming” when he had occupied it before, and stated that he was “not mentally and physically ready” to resume duties as a lead. Audio at ~10:54, ~12:08, ~15:15. An inquiry should be conducted to determine what precisely it was about acting as lead that caused claimant to experience such stress and to feel overwhelmed. EAB Exhibit 1 may be used to guide that inquiry. Further inquiry must also be made into how the alleged stress manifested itself, what concrete harms claimant was subjected to as a result of that stress, the reasons(s) that claimant thought his situation was sufficiently grave that he could not again work even temporarily as a lead, and what claimant feared would befall him if he assumed the lead position.

Additional inquiry should be made about the first time claimant worked as a lead in blends, until approximately October 2018, including how long he was in the lead position. As well, a detailed description should be sought of the impacts that being a lead had on claimant’s physical and mental health, any symptoms of which claimant experienced from being a lead, and any diagnoses, treatment or medical evaluations that claimant received as a result of being a lead. Overall, the record should be fleshed out to determine if it was reasonable for claimant to think that working as a lead again would constitute a grave circumstance.

An inquiry should also be made as to how long it was reasonably anticipated that claimant would work as a lead after the current lead left on January 25, 2019. Claimant should be asked to estimate how long he thought he would be working as lead before a replacement for the departing lead was hired, and on what he base that estimate. The employer’s witness should be asked how long the employer anticipated claimant would be a lead worker until the departing lead was replaced. Clarification of the hearing testimony of the employer’s witness should be sought to determine if, as of the time of the hearing, which was three months after the lead worker had left, a replacement lead still had not been found for the blends department. Audio at ~21:20. The cause(s) for any delay in replacing the departing lead also should be explored.

The intent of this decision is not to constrain the inquiry on remand. In addition to the suggested lines of inquiry, any follow up inquiry that is necessary or relevant to the nature of claimant’s work separation and whether or not it is disqualifying also should be made. On remand, the parties should also be allowed to provide any additional relevant and material information about the work separation, and to cross-examine each other as necessary.

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 *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 had good cause to leave work when he did, Order No. 19-UI-128913 is reversed, and this matter remanded for further information and development of the record.

DECISION: Order No. 19-UI-128913 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 6, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-128913 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 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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