

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0444

Reversed & Remanded

PROCEDURAL HISTORY: On March 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision that concluded claimant voluntarily left work without good cause (decision # 122410). Claimant filed a timely request for hearing. On April 23, 2019, ALJ Murdock conducted a hearing, and on April 30, 2019 issued Order No. 19-UI-129068, affirming the Department's decision. On May 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Idax Data Solutions employed claimant from January 25, 2019 to January 29, 2019.

(2) The job for which claimant was hired, data collector, involved collecting measurements at various sites within the city of Medford, Oregon to ensure the city's compliance with Americans with Disabilities Act (ADA) regulations.

(3) When claimant was hired on Friday, January 25, 2019, she was told she would undergo two days of training within the city of Medford on January 28 and 29, 2019, followed by a test on January 30, 2019, after which she would be left to work on her own at her new position.

(4) On January 28, 2019, when claimant reported for training, the employer had not provided claimant with the necessary tools, training materials, login information or online resources necessary for learning and performing the job. The employer did not send a trainer to the Medford site although claimant and four other data collector candidates were scheduled to be trained together. After claimant realized she could not access a necessary resource, field map and program or application from a previously provided link, claimant attempted unsuccessfully to uninstall and reinstall the link provided. Early that afternoon,

claimant emailed the person who had hired her concerning her inability to access the necessary online materials to learn and perform the job. Exhibit 1. That evening, claimant emailed the employer's hiring employee again because claimant had also failed to receive a necessary "ADA Collection Guide," but the employee did not resolve the problem. Exhibit 1.

(5) On January 29, 2019, the second day of scheduled training, only claimant and one other candidate out of the five returned to Medford for the second day of training. The employer sent an administrative employee from another city to step in as a trainer although that individual had never trained anyone to be a data collector. The trainer did not provide claimant with the collection guide, a GPS mapping tool, login information and the other necessary resources for her training. The trainer was unable to assist claimant in downloading a necessary employer application to her telephone. Claimant walked within the city with the trainer for approximately two hours on the second day, again without access to necessary tools and online resources for learning and performing the job. After concluding she would be unable to pass the test the next day, claimant left before the end of the training session that day and quit.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work, but additional evidence is necessary to determine whether she quit work with or without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Order No. 19-UI-129068 concluded that claimant quit work on January 29, 2019, and the record supports that conclusion. Claimant was unwilling to continue the employment after working for two hours on January 29, 2019 and left work at that time. The work separation therefore was a voluntary leaving.

Order No. 19-UI-129068 also concluded, however, that claimant quit work without good cause because although "the employer's training period was disorganized and lacking in resources to provide to claimant," which caused her to conclude she would be unable to learn the job sufficiently to pass the next day's test, those circumstances did not pose so grave a situation for claimant that she could not have either continued doing the best she could or requested that the scheduled test be delayed. Order No. 19-UI-129068 at 2. The record, as developed, is insufficient to support the conclusion that claimant left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4). 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 their employer for an additional period of time.

To determine whether claimant's voluntary leaving was with or without good cause, additional information is required. For instance, the record does not show why claimant decided that she was unwilling to stay for the remainder of the day on January 29th and take the test on January 30th with the limited training, information, and tools that she had received. Nor does the record show whether requesting a postponement of the test scheduled for Wednesday was a reasonable alternative under the circumstances, given claimant's testimony that the inexperienced trainer was "leaving on Thursday." Audio Record ~ 17:00 to 17:50. Although the record shows that claimant had not received the employer application, an ADA Collection Guide and GPS mapping tool despite multiple requests to the employer, the record fails to show whether the employer's lack of response to those requests had caused her to conclude that it would be futile for her to continue the employment, and if so, why. Nor does the record show what, if anything, claimant believed she could have done to avoid quitting, what she believed her working conditions would have been like if she stayed under the circumstances described, and why she believed she had no reasonable alternative but to quit when she did.

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's voluntary leaving was without good cause, Order No. 19-UI-129068 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 19-UI-129068 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: June 14, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-129068 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 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

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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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