

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0550

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 4, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162225). On April 16, 2019, claimant filed a timely request for hearing. On April 22, 2019, the Department issued a second decision # 162225 replacing the decision issued on April 4, 2019. On May 8, 2019, ALJ Yee convened a hearing and issued Order No. 19-UI-129578, dismissing claimant's request for hearing based on an alleged cancellation of decision # 162225. On May 13, 2019, the Office of Administrative Hearings (OAH) issued a letter order reopening the case and stating that a hearing would be scheduled. On June 3, 2019, ALJ Seideman conducted a hearing, and on June 10, 2019 issued Order No. 19-UI-131354, affirming the Department's decision that claimant voluntarily left work without good cause. On June 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Albertsons employed claimant at a distribution center from December 2016, after it acquired Safeway, until February 25, 2019. Claimant had previously worked for Safeway from April 10, 1989 until Albertsons acquired it.

(2) Beginning around 2010, a physician diagnosed claimant with anxiety. Claimant sought medical treatment and was prescribed medication. Claimant was able to continue working for Safeway despite having anxiety. At some point, claimant was able to stop taking medication to control his anxiety and he did so.

(3) After Albertson's became claimant's employer, claimant's job was changed and the time he spent commuting to work increased. Claimant began to experience panic attacks. Claimant did not consult with his physician after November 2017 and never asked his physician if he needed to leave work. Claimant did not resume taking medication to control his anxiety.

(4) Albertsons allowed employees to bid on job assignments, and awarded jobs based on seniority, among other considerations. The seniority claimant had achieved with Safeway transferred to his

position with Albertsons. Claimant had a great deal of seniority. Claimant did not seek to transfer to another job that might cause him less anxiety.

(5) Around December 2018, the employer issued a warning to claimant based on the attendance points he had accrued for absences. The employer had a point-based attendance policy in which employees accrued points based on absences and arriving late to work or leaving work early. The points an employee accrued dropped off after one year. Claimant's supervisor warned him that he should be careful in complying with the employer's attendance policy and try not to accrue additional points. Claimant understood his supervisor to tell him that he should not be absent for another day for the next six months.

(6) In February 2019, claimant decided to quit work because of anxiety. Claimant did not discuss his condition with his supervisor or any other employer representative. Claimant decided to notify the employer that he was leaving work on February 25, 2019. As of February 25, 2019, claimant had 10 hours of paid sick time available to him. As of that day, 1.0 of claimant's accrued attendance points dropped off and within three more weeks, an additional 1.5 accrued attendance points would have dropped off.

(7) On February 25, 2019, claimant notified the employer that he was quitting work as of that day.

CONCLUSIONS AND REASONS: Claimant voluntarily 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) (December 23, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

At hearing, claimant initially testified that he left work due to the anxiety he experienced. Transcript at 7, 8. However, claimant did not present evidence as to the negative consequences he would sustain from anxiety if he continued working. Claimant did not describe the specific harms he thought he was going to experience, such as, for example, emotionally, personally or professionally. Claimant therefore failed to show his anxiety constituted a grave circumstance.

Claimant also failed to pursue reasonable alternatives to quitting work due to his anxiety. He did not seek an evaluation from his treating physician as to whether his anxiety might be controlled sufficiently to allow him to work if he resumed taking medication, or if he pursued other treatment therapies such as, for example, talk therapy or biofeedback. Claimant did not seek advice from his physician or other professional as to whether he needed to leave work under the circumstances. Because claimant had been able to work for several years when he was seeing a physician and taking medication, a reasonable and prudent person with anxiety, would have sought medical intervention before concluding that they had no

option short of quitting work. Despite having anxiety, claimant also did not seek a transfer to a less stressful position that might have reduced his anxiety. A reasonable and prudent person with anxiety would at least have explored a transfer to a different position before concluding that the only solution to relieve their anxiety was to quit work.

Later in his testimony, claimant suggested that he quit work due to a fear that he would be discharged under the employer's attendance policy if he missed any more days of work. Transcript at 17, 28. However, claimant failed to show that the employer intended to discharge him for his attendance when he quit, and he did not challenge the testimony of the employer's witnesses that the employer did not. Transcript at 14, 24, 25. Claimant also failed to show that he could not have avoided missing any more days until points began to drop off his attendance record. Claimant therefore failed to establish that a reasonable and prudent person would have concluded that number of attendance points that he had accrued under the employer's attendance policy left him no option other than to leave work.

Claimant failed to establish cause for leaving work when he did, and is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-131354 is affirmed.

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

DATE of Service: July 18, 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 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 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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