

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0661

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 30, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 155055). Claimant filed a timely request for hearing. On June 26, 2019, ALJ Frank conducted a hearing and on July 3, 2019, issued Order No. 19-UI-132689, affirming the Department's decision. On July 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) RSG Forest Products Inc. employed claimant as a security worker from January 2014 until May 26, 2019. Claimant customarily worked on Saturdays and Sundays from 5:00 a.m. until 5:00 p.m.

(2) Since around 2009, claimant had lived with a male domestic partner. The domestic partner also worked for the employer. On April 7, 2019, claimant's domestic partner had a severe stroke and was hospitalized.

(3) On April 30, 2019, claimant's domestic partner was discharged from the hospital and returned home. Upon his return, claimant's domestic partner required supervision and care, including meal preparation and help with eating, assistance in bathing and dressing, having someone walk behind him to ensure that he did not fall, and having someone tend to many of his other needs.

(4) After April 30, 2019, claimant realized that the domestic partner's needs prevented her from working uninterrupted 12-hour shifts on her workdays, when the domestic partner was awake. Claimant's 17 year-old daughter provided care to the domestic partner on the weekends of May 4-5, 2019 and May 11-12, 2019 while claimant worked. Claimant's daughter was not able to provide continuing care for the domestic partner that would have allowed claimant to continue working day shifts. However, claimant thought that if she could work night shifts, from 9:00 p.m. until 5:00 a.m., when her partner would be asleep at home, she could continue working for the employer.

(5) Claimant asked the employer if she could change to night shifts. The employer did not allow the change. The employer did not tell claimant the employer would allow her to take a leave of absence to care for her domestic partner. Claimant did not know that the employer would allow her to do so.

(6) On May 17, 2019, claimant notified the plant manager that she was quitting work in two weeks because she needed to provide care to her domestic partner. The plant manager already knew that the domestic partner required claimant's care. Claimant still did not know that the employer would have permitted her to take a leave of absence to care for the domestic partner. The plant manager did not inform claimant that a leave of absence was an option.

(7) On May 26, 2019, claimant voluntarily left work to take care of her domestic partner.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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). 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. Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(5)(g).

"Compelling family reasons" means:

* * *

(B) The illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off[.]

* * *

OAR 471-030-0038(1)(e).

As used in OAR 471-030-0150 and this rule, "a member of the individual's immediate family" includes domestic partners. OAR 471-030-0038(1)(f).

Order No. 19-UI-132689 concluded that claimant voluntarily left work without good cause and therefore was disqualified from receiving benefits. The order reasoned that, while a domestic partner was an "immediate family member" for purposes of the "compelling family reasons" provision at OAR 471-030-0038(5)(g), claimant could not show good cause under that provision since claimant "did not

request time off the job or a leave of absence and, had she done so, the employer would have granted that request.” Order No. 19-UI-132689 at 3.

However, the order mistakenly assumes that the only vehicle under which claimant may show good cause for leaving work due to the need to provide care for the domestic partner is the “compelling family reasons” provision of OAR 471-030-0038(5)(g). Nothing in the rule suggests that the compelling family reasons provision is exclusive or that the general good cause provision found in OAR 471-030-0038(4) may not also be applicable.

Here, it appears that as of the time claimant left work, the domestic partner’s need for daily care and supervision created a grave situation for claimant. By asking the employer if she could change to night shifts that would allow her to provide care to the domestic partner, claimant explored the only alternative to quitting that was apparent to her at that time. The record fails to show that claimant knew or should have known that seeking a leave of absence was an alternative to leaving work, and that the employer would have allowed her to take such a leave in lieu of quitting. A claimant must know or have reason to know of an alternative before it may be considered a reasonable alternative to leaving work. *See Krahn v. Employment Dep’t.*, 244 Or App 643, 260 P3d 778 (2011). Because claimant’s circumstances were grave, claimant was reasonably unaware that taking a leave was an alternative to quitting, and the employer did not tell claimant that taking a leave was an option, claimant showed good cause for leaving work when she did.

Claimant had good cause for leaving work when she did. She is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Order No. 19-UI-132689 is set aside, as outlined above.

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

DATE of Service: August 21, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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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