

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0663

Reversed & Remanded

PROCEDURAL HISTORY: On June 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 82320). Claimant filed a timely request for hearing. On June 27, 2019, ALJ M. Davis conducted a hearing, and on July 5, 2019 issued Order No. 19-UI-132809, affirming the Department's decision. On July 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB. EAB did not consider claimant's written argument when reaching this decision because claimant did not include a statement declaring that claimant provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, because the case is being remanded to the Office of Administrative Hearings for another hearing to further develop the record, the parties may offer new information at the hearing on remand. At that time, the ALJ will decide if that information is relevant to the issues on remand and should be admitted into evidence, and the parties will have the opportunity to respond to the information. As it will state on the OAH notice for the hearing on remand, if the parties have documents that they wish to have considered at the hearing, they must provide copies of the documents to all parties and to the ALJ at OAH prior to the date of the hearing.

FINDINGS OF FACT: (1) Angelo's Pizza employed claimant from January 1, 2016 until March 28, 2019 to make pizzas, wait tables and act as person in charge.

(2) On March 28, 2019, claimant was scheduled to work. Before her shift, claimant told her supervisor she wanted to speak with him that day. He told her they could speak before her shift began. Claimant met with her supervisor and told him that she wanted one month off from work and a pay raise or she would give two weeks' notice. The supervisor told claimant the employer could not give her the time off from work.

(3) Claimant left the meeting and did not return to work or contact the employer again.

CONCLUSION AND REASONS: Order No. 19-UI-132809 is reversed and this matter remanded.

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 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.

29 C.F.R. §1630.2(h) defines “physical or mental impairment” as:

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

As a preliminary matter, it is necessary on remand to clarify the role of William Todd Martin, who appeared at the hearing with claimant, and whom claimant identified as her “interpreter” on her request for hearing. Audio Record at 3:00. Martin identified himself as claimant’s “assistant for comprehension issues,” and stated that his role was to explain matters to claimant if she was unable to understand. Audio Record at 2:26 to 2:33, 2:34 to 2:41. OAR 471-040-0025(3) (August 1, 2004) provides that parties “or their authorized agents” shall have the right to give testimony and to call and examine witnesses. If claimant confirms at the hearing on remand that Martin is her authorized agent, he should be permitted to give testimony, call witnesses, and ask questions of claimant and the employer’s witnesses.

In addition to Martin’s implicit assertion that claimant needed assistance to comprehend matters during the hearing, claimant testified that she “needed some grievance time,” “had called in sick” on March 26, 2019, “was having some problems,” and was “very illiterate.” Audio Record at 9:39 to 9:59, 17:58 to 18:04, 19:35 to 19:40. Order No. 19-UI-132809 applies the objective standard for a person with no impairment. On remand, it is necessary to determine if claimant had a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) that would require application of modified standard for good cause to quit of a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment.

At the hearing, claimant stated that she needed grievance time, but the record does not show what had occurred in claimant’s life or the effect of that event on her employment, or, if applicable, her mental health. The record does not show why or to what extent the event that led to her request for grievance time affected her and her ability to continue working, if at all. Nor does the record show what the employer’s representatives knew or should have known regarding claimant’s need for time off from

work. Claimant asked for time off work, but although claimant testified that she had asked for time off before March 28 (Audio Record at 30:32), the record does not show if the employer knew or should have known it was related to her need for grievance time, or, if applicable, for a medical condition. Claimant testified that she did not ask the owner about time off from work on or after March 28 because he had told her “it is between you and [your supervisor].” Audio Record at 18:08. The record does not show when this statement was made, the circumstances of that statement, or the impact of it on claimant’s behavior on and after March 28. Additionally, Martin began to testify about claimant’s behavior immediately after the March 28 meeting with the employer. Audio Record at 19:08. Such testimony may be relevant to show why claimant did not approach the employer about continued employment after March 28. The record does not show if claimant would have been eligible for family medical leave. In addition to time off work, claimant asked for a pay raise on March 28. The record does not show to what extent the employer’s decision, not to give claimant a raise on March 28, caused claimant to leave work when she did, or the circumstances that may have led to claimant’s request for a raise.

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 quit work with good cause, Order No. 18-UI-132809 is reversed, and this matter is remanded for additional inquiry.

DECISION: Order No. 19-UI-132809 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: August 21, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-132809 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 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

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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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