

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0706

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 14, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 92041). The employer filed a timely request for hearing. On June 20, 2019 and July 9, 2019, ALJ Frank conducted a hearing, and on July 17, 2019, issued Order No. 19-UI-133520, reversing the Department's decision and concluding that claimant was disqualified from benefits effective April 14, 2019 because she voluntarily quit work without good cause. On July 18, 2019, ALJ Frank issued Amended Order No. 19-UI-133629, amending Order No. 19-UI-133520 to change the effective date of the disqualification to April 7, 2019. On July 31, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she sought to introduce evidence not offered during the hearing. OAR 471-041-0090 (May 13, 2019) allows EAB to consider such additional evidence if the party offering it shows that it is relevant and material, and that factors or circumstances beyond the party's reasonable control prevented the party from presenting it during the hearing. Claimant's argument suggested that anxiety and nervousness might have interfered with her offering the additional evidence during the hearing. However, the recording does not indicate that claimant was distracted during the hearing, having problems understanding what was happening, or failing to participate sufficiently to recognize the types of information that she might offer on her own behalf.

Claimant's argument also suggested that confusion as to which party had the burden of persuasion might have prevented her from offering all relevant evidence at the hearing. However, claimant did not disclose in the argument what this additional evidence might be or how it was important. During the hearing, claimant did not allude to having relevant, additional evidence that, for whatever reason, she had not taken steps to offer into evidence. A party is reasonably expected to prepare for a hearing and organize the evidence that the party will present regardless of the burden of persuasion. For these reasons, EAB did not consider the additional evidence that claimant sought to present by way of her written argument.

The employer sent EAB a letter dated August 7, 2019, and a written argument on August 20, 2019. In its August 7, 2019 letter, the employer asserted that, if claimant had sent EAB a written argument, the employer had not received a copy of it. Because EAB did not consider the additional evidence that claimant sought to introduce by way of her written argument, the employer was not prejudiced if claimant did not provide a copy of that argument to the employer. With respect to the employer's August 20 written argument, EAB considered it to the extent it was based on the record.

FINDINGS OF FACT: (1) Engineering Economics Inc. employed claimant as a marketing coordinator from March 20, 2013 until April 9, 2019. Claimant resided in Oregon and worked remotely for the employer from Oregon. The employer's clients with whom claimant worked were largely based on the west coast and conducted business in the Pacific Time Zone.

(2) In addition to working for the employer, claimant also was a writer. Claimant and her husband both were published authors.

(3) Claimant had a grandmother who lived in Pennsylvania. Claimant's grandmother was in her eighties and had both of her knees replaced. The grandmother did not require full-time care or supervision, and lived in her own home. However, the grandmother had difficulty going up the three flights of stairs in her house, retrieving items from upper floors, and "moving around." Audio Record at 12:14 to 12:18. The grandmother's boyfriend lived with the grandmother in her house three days per week and assisted her on those days. On the remaining four days of the week, the grandmother was alone. Although claimant's mother and sister lived in the same geographic area as the grandmother, they were largely unavailable to assist the grandmother. Claimant thought the grandmother needed part-time assistance in her home.

(4) Before February 22, 2019, claimant discussed her grandmother's needs with her mother and sister. Claimant and her husband decided to move from Oregon to Pennsylvania and live with the grandmother in the grandmother's house. Claimant thought she and her husband could assist the grandmother. Claimant recognized that by living with the grandmother she and her husband would save money, which would allow them to focus on their writing careers. Claimant also moved to Pennsylvania because she wanted to spend more time with her mother and sister.

(5) On February 22, 2019, claimant had a telephone conversation with the employer's marketing manager. Claimant told the manager that she and her husband were moving to Pennsylvania on April 15, 2019 to live with and assist her grandmother, and focus on writing. The manager mentioned to claimant that it would be difficult for claimant to continue working for the employer after she moved to Pennsylvania because there was a three-hour difference between the Eastern Time Zone in which Pennsylvania was located and the Pacific Time Zone in which Oregon was located, and in which most of claimant's clients were located. The manager also told claimant that retaining her as employee would be difficult because the employer did not have a presence or offices in Pennsylvania. Claimant then offered to continue to work part-time for the employer as an independent contractor. The manager told claimant that she would discuss with the chief financial officer (CFO) whether the employer could continue to employ claimant after she moved, and claimant's employee status after she moved.

(6) As of March 4, 2019, claimant had decided to allow the employer to decide if she was going to continue working for the employer after she relocated to Pennsylvania. On March 4, claimant sent an

email to the marketing manager asking several questions about her employee status after she moved to Pennsylvania on April 15. In response to claimant's question about whether she would be eligible for unemployment insurance since she was not "quitting" and the employer was not "firing" her, the manager responded that she thought claimant was "effectively resigning" her position by moving to Pennsylvania, because the employer did not have job positions in that state. Exhibit 1 at 3, 4. The manager further told claimant that the employer had determined, "[I]t is preferable to make a hard break [in employment] effective the day before your move (April 15th). This is based on the fact that we are not currently set up for Pennsylvania payroll." Exhibit 1 at 4. The employer did not want to meet the State of Pennsylvania requirements necessary to keep claimant on as an employee after she moved to Pennsylvania.

(7) Later on March 4, 2019, claimant sent an email to the marketing manager informing her that she was giving notice that her last day working as an employee for the employer would be April 9, 2019.

(8) After March 4, the employer agreed to have claimant perform work for it as an independent contractor after her move to Pennsylvania.

(9) On April 9, 2019, claimant voluntarily left work. On April 15 or 16, 2019, claimant moved from Oregon to Pennsylvania and began residing in the grandmother's house. On April 18, 2019, claimant performed some work for the employer as an independent contractor.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

The employer contended that claimant voluntarily left work. Claimant testified that she "did and did not" resign her position on March 4, and that she had left it up to the employer to decide if she would continue providing services for the employer after she moved to Pennsylvania or if she was no longer going to work for the employer. Audio Record at 8:43 to 8:56, 9:05 to 9:22. Therefore, the first issue this case presents is the nature of the work separation. 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).

The employer was willing to allow claimant to continue working if she remained based in Oregon, since the employer would not have to meet the State of Pennsylvania requirements necessary for claimant to telecommute from Pennsylvania. By delegating to the employer the choice of continuing or ending the employment relationship after she was in Pennsylvania, claimant was implicitly expressing agreement with whatever decision the employer made. By not objecting to the employer's statement on March 4 that it considered her to have resigned, and by following up the employer's statement with her own formal notification that April 9 was going to be the day that her employment ended, claimant acquiesced to the employer's conclusion that she was quitting work. The record shows that claimant's work separation was a voluntary leaving on April 9, 2019.

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.¹

Claimant testified that she left work because she was moving to Pennsylvania to live with her elderly grandmother and help her with tasks she could not perform due to age-related limitations. The record does not show that the grandmother’s limitations created grave circumstances for claimant. As claimant described the grandmother’s needs, the grandmother did not require full time care or supervision, but needed some assistance in accessing items on the upper floors of her house and “moving around.” Audio Record at 12:14 to 12:18.

However, claimant did not indicate that her grandmother experienced significant difficulties or had significant unmet needs on the days of the week when the grandmother was alone and the grandmother’s boyfriend was not present in her house. Nor did claimant indicate that the grandmother experienced hazards or dangers on the days when she was alone in her house. Nor did claimant indicate that the tasks or activities the grandmother needed assistance with could not reasonably be deferred to those days when the boyfriend was in the house, or someone else was available to help. Nor did claimant indicate that the grandmother likely would need to move from her home unless claimant and her husband provided live-in assistance. On this record, claimant failed to show that no reasonable and prudent person would have continued to work for her employer instead of leaving work to move across the country to assist a grandmother who had the needs of claimant’s grandmother.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-133629 is affirmed.

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

DATE of Service: September 5, 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.

¹ “Compelling family circumstances” are good cause to leave work under OAR 471-030-0038(5)(g), and one such compelling circumstance is, on appropriate facts, the need to provide care for a member of an individual’s “immediate family.” OAR 471-030-0038(1)(e)(B). However, those provisions are inapplicable in determining whether claimant had good cause for leaving work because “immediate family” includes only spouses, domestic partners, parents, and minor children under the age of 18. OAR 471-030-0038(1)(f). Grandparents are not considered to be “immediate family” for purposes of evaluating good cause for leaving work under OAR 471-030-0038(1)(e)(B) and (5)(g).

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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 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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