

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0794

Reversed & Remanded

PROCEDURAL HISTORY: On July 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits effective June 23, 2019 (decision # 74533). Claimant filed a timely request for hearing. On August 8, 2019, ALJ Monroe conducted a hearing, and on August 16, 2019 issued Order No. 19-UI-135192, affirming the Department's decision. On August 21, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: This matter should be reversed and remanded.

ORS 657.176(2)(c) requires disqualification from unemployment insurance benefits if an individual voluntarily left work without good cause. The order under review concluded that claimant quit work without good cause, and therefore denied her benefits, because she "did not establish that the manager's treatment of her, viewed objectively, was so offensive or oppressive that no reasonable and prudent person would have continued working under such conditions," and that claimant's reasonable alternative to leaving work included "reporting her concerns to the employer." Order No. 19-UI-135192 at 2. The record does not support that conclusion for the reasons that follow.

OAR 471-030-0038(4) provides:

Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. *For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work.* Except as provided in OAR 471-030-0038(5)(g), for all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

(Emphasis added.) The record under review does not show that claimant had a permanent or long-term physical or mental impairment as defined at 29 CFR §1630.2(h). The order under review therefore

applied the standard of “a reasonable and prudent person of normal sensitivity, exercising ordinary common sense,” and not the standard of “a reasonable and prudent person with the characteristics and qualities of” an individual with a permanent or long-term physical or mental impairment.

In claimant’s written argument, however, she stated, “My reason for disagreeing with [the order under review] is, I am not a ‘prudent person of normal sensitivity.’ I have mental disabilities that affect my decision making and I am very sensitive around people who act out aggressive. I was threatened at work by my supervisor to work faster as well as being told I would be replaced for asking for time off for medical appointments and such. There were co-workers at [the employer’s business] that spoke and acted inappropriate in such a way that triggered my mental statues [*sic*].” With the argument, claimant included a letter from her mental health provider stating that claimant has been diagnosed with major depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder.

Generally speaking, EAB does not consider additional evidence when reaching decisions. *See* ORS 657.275(2). However, EAB may allow a party’s request to consider additional evidence when the party offering the additional evidence is relevant and material to EAB’s determination, and the party establishes that factors or circumstances beyond the party’s reasonable control prevented the party from offering the additional evidence. *See* OAR 471-041-0090(1)(b).

In this case, the provision of OAR 471-030-0038(4) that establishes a different “good cause” standard for individuals with permanent or long-term impairments makes claimant’s mental health around the time she quit, and information about her mental health affected her decision-making during that time, relevant and material to a “good cause” determination. The record shows that claimant did not offer any evidence about her mental health during the hearing. However, claimant appeared at the hearing as an unrepresented layperson. As such, the ALJ conducting the hearing had a duty to inquire, including a duty to ask claimant questions necessary to determine which “good cause” standard to apply to claimant’s voluntary leaving. *See* ORS 657.270 (requires the ALJ to give all parties a reasonable opportunity for a fair hearing); *see also* *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986) (the obligation to inquire 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).

The ALJ’s failure to develop the record regarding any impairments claimant had, under the circumstances, amounts to a factor or circumstance beyond claimant’s reasonable control. The additional evidence claimant provided is therefore admitted into evidence under OAR 471-041-0090(1)(b). Claimant’s written argument is marked as EAB Exhibit 1. The letter from claimant’s mental health provider is marked as EAB Exhibit 2. Any party that objects to our admitting EAB Exhibits 1 and 2 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

Because the ALJ did not ask whether claimant had permanent or long-term impairments, and did not allow claimant the opportunity to establish on the record how any impairments affected her ability to withstand the treatment she received from her supervisor and coworkers, or affected her decision-making process with respect to whether, when, and how she chose to leave work, the record is incomplete. This matter must therefore be remanded for an inquiry into those matters. Order No. 19-UI-135192 is set aside as unsupported by the record, and this matter is remanded.

DECISION: Order No. 19-UI-135192 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 23, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-135192 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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