

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0805

Order No. 19-UI-134434 Reversed & Remanded
Order No. 19-UI-134435 Affirmed - Ineligible Weeks 23-19 through 25-19

PROCEDURAL HISTORY: On June 27, 2019, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant voluntarily left work without good cause (decision # 145059), and the other concluding claimant was not available for work from June 2 through June 22, 2019 (decision # 145838). Claimant filed a timely request for hearing on both decisions. On July 25, 2019, ALJ Frank conducted two hearings, and on August 2, 2019 issued Order Nos. 19-UI-134434 affirming decision # 145059, and 19-UI-134435 affirming decision # 145838. On August 19, 2019, claimant filed applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Order Nos. 19-UI-134434 and 19-UI-134435. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0804 and 2019-EAB-0805).

Case No. 2019-UI-97795. EAB reviewed the entire hearing record in Case No. 2019-UI-97795. On *de novo* review and pursuant to ORS 657.275(2), Order No. 19-UI-134435, which concluded that claimant was not available for work or eligible for benefits from June 2 through June 22, 2019 (weeks 23-19 through 25-19), is **adopted**.

Case No. 2019-UI-97794.

FINDINGS OF FACT: (1) Open Dental Software Inc. employed claimant from December 2018 until May 24, 2019 to provide technical support.

(2) Claimant had permanent or long-term depression and anxiety, and experienced work-related stress and panic attacks while working for the employer.

(3) Claimant's mother was scheduled to have knee surgery in May 2019. Claimant's mother also has "memory issues." Audio Record at 11:13. Claimant knew her mother would be unable to walk and would need assistance with medication, toileting, and ambulating for some period after her surgery.

Claimant did not know how long her mother would need her to care for her. Claimant was not able to find anyone else to care for her mother after her surgery.

(4) Claimant did not ask the employer if she could take time off work to assist her mother after her mother's surgery. Although claimant did not qualify for family medical leave, the employer would have offered claimant an informal leave of absence.

(5) On May 13, 2019, claimant gave the employer a letter giving the employer notice that, "due to health issues," her final day of work would be May 24, 2019. Exhibit 1.¹

(6) On May 20, 2019, claimant's mother had knee surgery. On May 24, 2019, claimant voluntarily left work to care for her mother after her knee surgery and because claimant believed taking time off work to care for her mother would cause additional stress that would affect her health.

CONCLUSIONS AND REASONS: Order No. 19-UI-134434 is reversed and remanded for further development of the record.

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 depression and anxiety, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments 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" includes 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)(B). "A member of the individual's immediate family" includes parents. OAR 471-030-0038(1)(f).

Order No. 19-UI-134434 concluded that claimant did not leave work due to compelling family reasons because claimant did not request time off work and had she done so, the employer would have granted her request.² The record supports that conclusion. However, the record does not include the information necessary to consider whether claimant had good cause to quit under OAR 471-030-0038(4) because of her mental health and the effect a leave of absence would have had on her mental health, for which it is necessary to apply the standard for a reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments.

¹ Order No. 19-UI-134434 erroneously stated that no exhibits were offered or admitted into the record. Exhibit 1, claimant's notice of her intention to quit work, was admitted at hearing without objection. Audio Record at 8:16.

² Order No. 19-UI-134434 at 1-3.

The record should be developed regarding claimant's impairments and the effect of her work on her mental health prior to quitting. The record does not show what other symptoms, if any, claimant experienced prior to quitting, and if they were related to her work. The record does not contain information about claimant's working conditions before she quit. The record does not show the volume of work claimant had or whether claimant was able to complete her work. If claimant was not able to complete her work, the record fails to show whether she requested or received support from the employer to modify or complete her workload.

The record should likewise be developed regarding the effect claimant anticipated time off work would have on her work and mental health, and why she preferred to quit rather than take time off work. The record does not contain sufficient information about why claimant believed taking time off work posed a grave situation for claimant. The record does not show how time off work would affect claimant's ability to perform her duties upon her return. The record does not show if the employer had permitted claimant to take time off work in the past. If claimant had taken time off work in the past, the record does not show the effect of the time off on her workload and her mental health upon her return. The record does not show what the employer would do to cover claimant's duties in her absence, or if claimant's workload would accumulate in her absence.

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 further development of the record is necessary for a determination of whether claimant had good cause to quit work when she did, Order No. 19-UI-134434 is reversed, and this matter is remanded.

DECISION: Order No. 19-UI-134434 is set aside and remanded for further proceedings consistent with this order. Order No. 19-UI-134435 is affirmed.

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

DATE of Service: September 25, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-134434 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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