

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0889

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 2, 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 2, 2019 (decision # 81900). Claimant filed a timely request for hearing. On August 28, 2019, ALJ S. Lee conducted a hearing, and on September 5, 2019 issued Order No. 19-UI-136156, affirming the Department's decision. On September 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's arguments when reaching this decision. With respect to claimant's argument that the ALJ erred in excluding Exhibit 1 from the record, any error was without prejudicial effect given the ultimate outcome of this case and the issue is moot.

FINDINGS OF FACT: (1) Lowes Home Centers employed claimant as a store manager from 2001 to June 21, 2019.

(2) In approximately 2016, claimant was hospitalized with what he thought might be a heart attack. He was diagnosed with extreme anxiety. He began taking anxiety medication but experienced negative side effects including significant weight gain. After approximately two years, claimant began to taper off the medication under medical supervision.

(3) In 2019, claimant experienced a significant increase in stressful working conditions after a new CEO began working, and claimant's regional and district vice presidents were replaced. By May 2019, claimant's anxiety had worsened and he again sought medical treatment. His physician prescribed a new anxiety medication, which claimant took as needed, and claimant began to take periods of protected leave under the Family and Medical Leave Act (FMLA).

(4) On June 7, 2019, claimant experienced a severe panic attack and sought immediate medical treatment. Claimant's doctor restricted claimant from working for two weeks. Claimant decided to quit

his job to avoid continuing to work under conditions that would cause further debilitating anxiety episodes that he feared endangered his health and his life.

(5) Claimant decided to submit notice that he was retiring rather than resigning in order to be eligible for an employee benefit allowed only to retirees. On June 7, 2019, claimant notified the employer that he was retiring, effective June 21, 2019.

(6) Claimant had protected leave and sick leave pay available to him at the time he quit. He did not want to take leave because it had not worked in the past to resolve his anxiety or the conditions causing his anxiety, and he was concerned about the effect taking medical leaves would have on the store he managed. Claimant did not ask human resources about demoting him to a less responsible position in the store because that was not typical in the employer's business.

(7) After claimant quit his job, his physician immediately endorsed claimant's decision as beneficial to his well-being.

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). Claimant had anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). 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.

The order under review concluded that claimant quit his job without good cause. Noting that claimant was reluctant to use his accrued sick leave to take a medical leave because it might be detrimental to his store, the order reasoned that claimant had the reasonable alternatives of taking paid sick leave and working with his doctor to address the anxiety he experienced, "and seeing if his symptoms improved so that he could return to work," or "addressed if there were any reasonable alternatives with the employer."¹ The record does not support those conclusions.

As a preliminary matter, the preponderance of the evidence shows that claimant quit work primarily because of his health concerns. The fact that claimant might also have wanted to act to the benefit of the employer and his store by quitting instead of taking extended periods of medical leave does not negate that claimant's health was his primary reason for leaving work.

¹ Order No. 19-UI-136156 at 4.

With respect to addressing reasonable alternatives with the employer, the record does not show that any existed at the time claimant quit work.² The situation causing claimant's anxiety continued, and it was not typical for the employer to demote store managers to positions of lesser authority. Claimant's only alternative to quitting work, at the time he quit, was therefore to take a leave of absence.

While taking a leave of absence was an alternative for claimant, it was not reasonable because it was unlikely that taking a leave of absence would meaningfully resolve claimant's health concerns. Claimant knew that the store could not function if the store manager was away from work for extended periods of time, likely causing him more anxiety about taking time off work. At the time claimant quit work, he had been experiencing severe anxiety for three years, and, notwithstanding that he was under medical care and took time off work throughout that time, he continued to experience debilitating anxiety based upon his working conditions. In fact, on the day he turned in his notice of retirement, claimant continued to experience anxiety so severe that his physician restricted him from working for two weeks. Notably, while the physician did not recommend claimant quit his job, he immediately endorsed claimant's decision to quit work as beneficial to his well-being.

On this record, claimant's health situation was a grave situation, and he did not have any reasonable alternatives to quitting work when he did. Claimant therefore showed good cause for quitting work, and is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-136156 is set aside, as outlined above.

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

DATE of Service: October 17, 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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² The correct point in time at which to determine whether reasonable alternatives existed is "at the time [claimant] left work," not at the time claimant gave notice, or any point other than the time claimant left work. *Kay v. Employment Department*, 284 Or. App. 167, 391 P.3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or. App. 604, 403 P.3d 423 (2017); *Kay v. Employment Department*, 292 Or. App. 700, 425 P.3d 502 (2018) (*Kay II*).



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 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 الإستئناف 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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