EO: 200
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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

386
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0949

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 21, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 144405). The employer filed a timely request for hearing. On September 27, 2019, ALJ Griffin conducted a hearing, and on October 1, 2019, issued Order No. 19-UI-137360, concluding claimant voluntarily left work without good cause. On October 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's written argument asserted that claimant's procedural and due process rights were violated because the ALJ did not "sufficiently clarify a witness' testimony," and the order did not "contain findings of fact that are clear, unambiguous and sufficiently definite to enable [review]." Claimant's Written Argument at 1. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(2), (3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

Claimant's argument further asserts that claimant had good cause to quit when she did because she was physically unable to perform the "duties of lifting that her job required," and she had no reasonable alternative to quitting because human resources was "unable to accommodate her situation." Claimant's Written Argument at 1-2. The argument misstates claimant's burden to establish good cause to quit, and the findings and conclusions in the order.

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). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). 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.

The written argument misrepresents claimant's burden of proof to establish she had good cause to leave work by stating that the ALJ determined claimant's injury was "not grave enough . . . to warrant separation," and that the employer was not competent to determine the gravity of claimant's injury." Claimant's Written Argument at 2. However, the standard is not merely whether claimant's injury was grave, but whether claimant's circumstances were so grave that she had *no reasonable alternative but to leave work* when she did. Claimant had reasonable alternatives to quitting work on July 30.

As stated by the order under review, claimant had the reasonable alternative of continuing to perform the job duties she was capable of performing with her injury, and notifying her manager or human resources when she was unable to perform certain tasks. Claimant was able to perform light duty work, stocking and some production duties, and had been doing so since the end of April 2019. The employer never required claimant to perform donation attendant work after her surgery. Each time claimant told her manager she was unable to do such work, the manager allowed claimant to perform other, lighter work. The record does not show that claimant faced any adverse employment consequences or discipline because she told her manager and human resources that she was unable to perform donation attendant work. Thus, claimant was able to perform work that was offered to her, and the employer did provide accommodations based on claimant's injury.

Claimant was concerned that the employer would return her to donation attendant work in part because she had not received a new job title for a job she could perform by July 30. However, despite not having a new job title by July 30, at the time claimant left work, she was performing stocking and production work, and was not required to perform work she was unable to complete with her injury. Rather than quit, claimant had the reasonable alternative of discussing her job duties and job title with her manager and human resources again. The record does not show that it would have been futile to do so where human resources told claimant it would change claimant's job description, and told claimant's manager to begin discussing accommodation options with claimant. The manager then discussed options with claimant. Although claimant was dissatisfied with the stocking and sporadic production training she received, and the options the manager offered to her, claimant's dissatisfaction was based on her dislike for the positions and opinion that production work did not offer opportunities for advancement, and was not based on an inability to perform the work. However, the employer accommodated claimant by giving her work she could perform with her injury and was willing to continue doing so.

Claimant was also concerned that the employer would return her to donation attendant work because the manager stated that claimant's doctor had released her to perform donation attendant duties. Rather than quit work when she did, claimant had the reasonable alternative of consulting her doctor, as she did just nine days after she quit, and asking the doctor to modify their recommendation as to what activities claimant was able to do while recovering from her injury. The employer had given claimant light duty and modified work within her physical limitations for two months before she was released to full duty

on July 1. The record does not show that the employer was unable or unwilling to continue giving claimant modified or light duty work based on new doctor recommendations.

For these reasons, claimant did not meet her burden to show by a preponderance of the evidence, that she had good cause to leave work when she did.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 19-UI-137360 is affirmed.

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

DATE of Service: November 7, 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.

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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