

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0967

Order No. 19-UI-136763 Reversed – No Disqualification
Order No. 19-UI-136770 Modified – Additional Benefits Payable

PROCEDURAL HISTORY: On August 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause (decision # 160214). On August 5, 2019, the Department served notice of a second administrative decision concluding claimant was eligible only for reduced unemployment insurance benefits based on her non-school wages during the weeks from July 14 through August 24, 2019 (decision # 161357). Claimant filed timely requests for hearing on both decisions.

On September 13, 2019, ALJ Snyder conducted a hearing on decision # 160214, and on September 19, 2019, issued Order No. 19-UI-136763, affirming that decision. On September 13, 2019, ALJ Snyder conducted a separate hearing on decision # 161357, and on September 19, 2019, issued Order No. 19-UI-136770, affirming that decision. On October 8, 2019, claimant filed applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 19-UI-136763 and 19-UI-136770. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0967 and 2019-EAB-0968, respectively).

Claimant submitted written argument in support of their application for review of Order No. 19-UI-136763. However, claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Madrone Trail Public Charter School (MTPCS) employed claimant as an administrative assistant from September 2015 to July 9, 2019. Claimant's regular hours were 7:30 a.m. to 4:00 p.m.

(2) Claimant suffered from anxiety and depression, and had been undergoing treatment for those conditions since approximately 2012.

(3) From September 2015 to the 2018-2019 school year, the employer's office duties had been performed by two administrative assistants and its director. However, prior to the 2018-2019 school year the director and one administrative assistant resigned leaving claimant as the only remaining office employee with experience. Consequently, during the school year claimant was asked to take on a number of different jobs at the employer in addition to her administrative assistant duties. She was expected to help train two different office managers who worked during the 2018-2019 school year after the first new office manager resigned after a short period of time. She also was expected to perform some janitorial duties, treat student injuries, cover the front desk, and prepare breakfast meals for students.

(4) During the school year, claimant fell behind in performing her regular duties, which caused her increased stress. Claimant's treating mental health provider became aware that claimant had lost a significant weight over the past year, was not sleeping well over concern about her increased work load and inability to timely complete tasks and that her panic attacks were worsening. As a result, claimant underwent monthly therapy and her medication regimen was changed twice during the school year. Claimant told the employer about her conditions and medication changes, and that she was experiencing increased stress over her workload. She requested some assistance but, due to the employer's budget limitations, the employer was not able to accommodate her need for assistance. Near the end of the school year in 2019, claimant's provider "urged" her to "discontinue working [for the employer] because it was affecting my health so bad." Transcript (2019-UI-99351) at 10.

(5) In early June 2019, the employer's interim director at that time and another administrator met with claimant to discuss her occasional tardiness in reporting for work and that some of her work tasks not being completed in a timely fashion. Claimant began "bawling" and explained that her work load had become too much for her to complete on her own and if she did not receive additional help she would not be able to return to the employer for the next school year due to her condition. Transcript (2019-UI-99351) at 19.

(6) The employer concluded that it could not create another assistant position to assist claimant due to its tight budget and that it could not offer her any other accommodation that would work for both parties and informed claimant of those facts.

(7) On June 25, 2019, claimant gave the employer notice that she was quitting effective July 9, 2019. On July 9, 2019, claimant quit work to protect her health.

(8) Claimant filed an initial claim for unemployment insurance benefits on July 15, 2019, effective the third quarter of 2019. An initial claim filed during that quarter has a base year that begins on April 1, 2018 and ends on March 31, 2019.

(9) Claimant's base year employers included Home Care Workers (HCW), a non-educational employer and MTPCS, an educational institution. The Department determined that claimant had a valid claim for weekly benefits in the amount of \$582 based upon all wages claimant earned during her base year from both HWC and MTPCS. The Department also determined claimant had a valid claim for reduced benefits, with a weekly benefit amount of \$232, based solely upon her earnings from HCW, and that she was eligible only for the reduced benefit amount for the weeks claimed because she had reasonable assurance of continuing work with MTPCS during the 2019-2020 school year.

(10) The recess period between the 2018-2019 and 2019-2020 academic years for MTPCS began June 5, 2019 and ended August 3, 2019 (weeks 23-19 through 31-19). Claimant claimed benefits for the weeks including July 14 through August 24, 2019 (weeks 29-19 through 34-19).

(11) Claimant worked for MTPCS as a full-time administrative assistant during the 2018-2019 academic year. Claimant's position was a year-round, non-instructional position. Claimant earned \$600 from MTPCS during at least one week of the 2018-2019 academic year.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause. Benefits based on claimant's base year wages from MTPCS are payable to claimant during the period between two successive academic years.

Voluntary Leaving. 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 suffered from anxiety and depression, and had been undergoing treatment for those conditions since approximately 2012 making them a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with such impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for their employer for an additional period of time.

Order No. 19-UI-136763 concluded that claimant quit work without good cause, reasoning that although claimant may have faced a grave situation due to her stress and depression, claimant could have accepted the employer's offer to reduce her hours, requested a leave of absence, or attempted to work full eight hours days to complete her work. However, the record does not support the order's conclusion or reasoning.

The order did not address that claimant's anxiety and depression constituted a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) and that as such, a different standard of proof applied – i.e. whether a reasonable and prudent person *with the characteristics and qualities of an individual with claimant's impairment* would have continued to work for the employer for an additional period of time. Nor did the order address the fact that claimant's treating medical provider recommended that claimant quit work "because it was affecting [her] health so bad."

Claimant's health situation was grave. Claimant had lost significant weight during the previous year due to her stress, was not sleeping well over concern about her increased work load and inability to timely complete tasks and her panic attacks were worsening. As a result, claimant was undergoing monthly therapy and her medication regimen was changed twice during the school year without success in an effort to find an effective way to treat her increasing stress over her work situation.

Contrary to the order's reasoning, the record shows the employer never offered claimant a reasonable alternative to quitting. Although the employer's witness asserted that the employer internally discussed the possibility of creating two part-time positions, it never did so or offered that option to claimant because in the end it concluded that due to its tight budget and it could not create another assistant position or offer her any accommodation that would work for both parties. Transcript (2019-UI-99351) at 32. The witness also asserted that the employer could not offer FMLA leave to claimant because it did not have enough employees, and although it may have considered offering claimant some other form of leave, it never told claimant that even was a possibility. Transcript (2019-UI-99351) at 37. Finally, the record as a whole shows that the likely reason claimant was not working full eight hour days beginning at 7:30 a.m. was due to her insomnia over her stress, panic attacks and medication changes rather than due to a personal choice to work less than a full day.

Viewed objectively, no reasonable and prudent person with claimant's anxiety and depression disorders in her circumstances, having been "urged" to quit by her mental health provider, would have continued to work for the employer for an additional period of time. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

Eligibility for Benefits During Recess Period. The Department determined that claimant had a valid claim for weekly benefits in the amount of \$582 based upon all wages claimant earned during her base year from both HWC and MTPCS. The Department also determined claimant had a valid claim for reduced benefits, with a weekly benefit amount of \$232, based solely upon her earnings from HCW and that she was eligible only for the reduced benefit amount for the weeks claimed because she had reasonable assurance of continuing work with MTPCS during the 2019-2020 school year.

When claims for benefits are based on base-year wages from an educational institution, both ORS 657.167 and ORS 657.221 require a reduction in those benefits under certain prescribed conditions. Claimant seeks benefits based on services performed for MTPCS as a full-time, year-round administrative assistant during the 2018-2019 academic year. MTPCS is an educational institution as defined in ORS 657.010(6). Therefore, ORS 657.221, which applies to services performed for educational institutions by individuals, such as claimant, in other than an instructional, research or principal administrative capacity, limits when those benefits may be paid, if prescribed conditions are satisfied.

ORS 657.221(1)(a) prohibits benefits based upon services for an educational institution performed by a non-educational employee from being paid "for any week of unemployment that commences during a period between two" terms "if the individual performs such services in the first academic term" and "there is a reasonable assurance that the individual will perform any such services in the second" term. That law applies when the individual claiming benefits "was not unemployed," as defined at ORS 657.100, during the academic term prior to the term break, regardless whether claimant's position observed between-term recess periods. In sum, the conditions that must be met for the between-terms

school recess denial to apply to claimant are these: (1) the weeks claimed must commence during a period between two academic terms; (2) claimant must not have been “unemployed” during the term prior to the recess period at issue; and (3) there is reasonable assurance of work during the term following the recess period at issue.

Order No. 19-UI-136770 concluded that claimant sought benefits for a period between two academic years and was not unemployed during the term prior to the recess period, and the preponderance of the evidence in the hearing record supports those conclusions. Order No. 19-UI-136770 at 3-4. However, the order also concluded that claimant had reasonable assurance of continuing work in the 2019-2020 academic year, reasoning:

Claimant’s employment [with MTPCS] was continuous and she knew that if she did not voluntarily leave work, she would continue working for the employer in the same capacity during the upcoming 2019-2020 academic year.

Order No. 19-UI-136770 at 3. However, OAR 471-030-0075(4) provides: “An individual who voluntarily leaves work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person left work.” OAR 471-030-0075 (4) (April 29, 2018). Having concluded in these consolidated cases that claimant voluntarily left work with good cause on July 9, 2019, it is further concluded, for that reason, that claimant does not have reasonable assurance of continuing work with MTPCS during the 2019-2020 academic year. Accordingly, the prescribed conditions of 657.221 have not been shown to have been satisfied with respect to benefits based on claimant’s base-year wages for that employer for the weeks both during and after the period between two successive academic years, and the full benefit amount of \$582 is payable to claimant for any weeks claimed, provided claimant is otherwise eligible.

DECISION: Order No. 19-UI-136763 is set aside. Order No. 19-UI-136770 is modified, as outlined above.¹

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

DATE of Service: November 15, 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 These decisions reverse and modify orders that denied and reduced benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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

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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.

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