

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0989

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 29, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104745). Claimant filed a timely request for hearing. On September 24, 2019, ALJ Snyder conducted a hearing, and on October 2, 2019 issued Order No. 19-UI-137441, affirming the Department's decision. On October 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision. Claimant provided additional evidence with her written argument. The additional evidence consisted of a letter from Tyler Freedell Nelson, MD, and a letter from Granthem T. Farr, DO. The letter from Dr. Freedell is relevant regarding claimant's medical conditions at the time she quit work, and has been marked as EAB Exhibit 1. The letter from Dr. Farr speaks to claimant's ability to work at the time the letter was written, on October 21, 2019, and is therefore of limited relevance in this matter. EAB considered EAB Exhibit 1, but not the letter from Dr. Farr, when reaching this decision under OAR 471-041-0090(1)(a) (May 13, 2019) (allowing EAB to receive additional evidence into the record if necessary to complete the record.) A copy of EAB Exhibit 1 is provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 will remain in the record.

FINDINGS OF FACT: (1) Morphotrust USA LLC employed claimant from August 2018 until August 2, 2019 as an enrollment agent.

(2) In mid-May 2019, claimant developed severe breathlessness, even with minimal exertion, and was diagnosed with asthma and a chronic obstructive pulmonary disease (COPD) exacerbation. EAB Exhibit 1.

(3) After May 2019, and continuing until claimant ended her employment on August 2, 2019, claimant experienced alternating periods of improvement, then relapse, of acute COPD and asthma symptoms.

Claimant sought treatment for her medical conditions, and used medication to treat her symptoms. Claimant's doctors were unable to identify what triggered the COPD exacerbations. During relapses, claimant was unable to work. Claimant was hospitalized three times during her employment due to COPD "flare ups," including at the end of May 2019, and the beginning of June 2019. Audio Record at 12:32. Each time, claimant's doctors gave claimant a "note" to give the employer to show she was unable to work, and released her to return to work when her symptoms improved. Audio Record at 15:48. Claimant's doctors never advised claimant to quit her job.

(4) The unpredictable "flare ups" caused claimant to feel "really tired and really stressed out," and "scared" about her medical condition. Audio Record at 13:29, 13:38. Claimant felt additional stress from having to call in to the employer to report that she was unable to work. Claimant felt that she was not working to the best of her ability due to her medical conditions, and that her work performance was "unfair" to her coworkers. Audio Record at 22:28.

(5) As of August 2, 2019, claimant was working part time and was not accruing paid time off work. The employer was not willing to allow claimant to work on an "on call" basis. Audio Record at 17:42. Claimant did not contact human resources regarding accommodations.

(6) The employer never told claimant she was missing too much work. The employer did not discipline claimant for having missed work due to her medical conditions.

(7) On August 2, 2019, claimant left work due to her health conditions and the stress from having to call out sick when she experienced the unpredictable COPD exacerbations.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). "[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). Claimant had chronic obstructive pulmonary disease and asthma, permanent or long-term "physical or mental impairments" 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.

Claimant left work because she experienced stress from having to call out sick when she experienced COPD exacerbations. The record does not show that the stress claimant experienced from having to call out sick posed a situation of such gravity that claimant had no reasonable alternative but to quit when she did.

The record fails to show that claimant experienced adverse employment consequences due to her absences or due to her possibly diminished work performance. Claimant missed work due to

hospitalization three times after she began experiencing COPD exacerbations in May 2019. Each time, claimant was able to provide a note from her doctors to her employer showing her medical need to miss work. Each time, when her condition improved, claimant's doctors released her to return to work and claimant did so without apparent repercussions at work. The employer did not tell claimant she was missing too much work, or discipline her for her absences. Although claimant felt it was "unfair" to her coworkers that claimant missed so much work, the record does not show that claimant's coworkers mistreated her because of her absences.

Notably, claimant did not assert, and the record does not otherwise show, that claimant's work environment triggered claimant's asthma or COPD, or was otherwise unsuitable.¹ Claimant's doctors released claimant to return to work after each "flare up," and never recommended claimant quit her job. Claimant testified that she would have continued to work for the employer if the employer had allowed her to work on an "on call" basis. Audio Record at 17:38 to 17:51. However, although claimant would have preferred to work on an "on call" basis, the record does not show that no reasonable and prudent person with claimant's medical conditions would have continued to work for the employer, and call out sick when unable to work. Continuing to do so was a reasonable alternative to quitting, even if claimant would have preferred to work on an "on call" basis.

Claimant voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits until she has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-137441 is affirmed.

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

DATE of Service: November 22, 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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¹ In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190.



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

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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