

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1022

Reversed & Remanded

PROCEDURAL HISTORY: On September 18, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 171532). Claimant filed a timely request for hearing. On October 8, 2019, ALJ Snyder conducted a hearing, and on October 16, 2019, issued Order No. 19-UI-138229, affirming the Department's decision. On October 22, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments also contained information that was not part of the hearing record, and with the exception of the telephone text messages addressed below, did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing and EAB Exhibit 1 when reaching this decision. *See* ORS 657.275(2).

EVIDENTIARY MATTER: Claimant submitted to EAB copies of telephone text messages from the employer's owner to claimant on August 26, 2019. Although claimant did not offer these documents into evidence during the hearing, OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider information not presented at the hearing if it is relevant to the issues before EAB and the party offering it on review shows that factors or circumstances beyond the party's reasonable control prevented it from offering it during the hearing. Claimant did not have the documents until after the hearing, which was a circumstance beyond claimant's reasonable control that prevented claimant from having that information available and offering it into evidence during the hearing. Because the information relates to the final incident that caused claimant to quit and appears to provide information that contradicts the record and impeaches some of the owner's testimony,¹ it is relevant regarding the factual findings and the matter of the parties' credibility. Claimant has made the required showing under OAR 471-041-0090(2), and the copies of text messages submitted are admitted into the record as EAB Exhibit 1.

¹ The employer's owner testified that the text message referred to the "incompetence" of the "entire management group, including [the owner]." Audio Record at 16:38.

A copy of EAB Exhibit 1 accompanies the copies of this decision sent to the parties. Any party who objects to the admission of EAB Exhibit 1 must submit any such objections to this office in writing, setting forth the basis for the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received and sustained, EAB Exhibit 1 will remain a part of the record. As appropriate, EAB Exhibit 1 should be used as a basis for further inquiry of the parties at the hearing on remand.

FINDINGS OF FACT: (1) Cornerstone Management LLC employed claimant from January 2014 until August 27, 2019, last as a production manager.

(2) On August 26, 2019, after claimant left work, the employer's owner sent claimant text messages. Claimant did not read the messages until he was at work the next morning.

(3) On August 27, 2019, claimant quit work after he read the owner's text messages.

CONCLUSIONS AND REASONS: Order No. 19-UI-138229 is reversed and this matter is 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). "[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 with an impairment² 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 employer's owner testified that the business was "fast paced" and "stressful," and that claimant was not able to handle the stress of the employer's workplace. Audio Record at 17:18, 19:27, 20:24 to 20:29. The record does not include information from the owner as to why he believed the workplace was stressful, or why he believed claimant could not handle the stress. The record does not show if the employer did or could do anything to alleviate claimant's work stress. The record has no information from claimant in response to the owner's assertion that the work environment was stressful, or that claimant was not able to handle the stress. The record does not show if claimant had been diagnosed with any health conditions that affected his decision to leave work when he did. The record does not show if claimant sought alternatives to leaving work, such as, for example, discussing his concerns with the owner. It is necessary to determine if any potential alternatives were realistically available to claimant, or if they were futile.

The owner testified that he had planned to demote claimant. Audio Record at 18:00 to 18:11. The record does not contain sufficient detail about claimant's role as a production manager and how his job duties

² A permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h).

related to his decision to quit work. The record does not show if claimant knew the employer planned to demote him, or change his job duties, and whether that affected claimant's decision to leave work. The record does not show if continuing to work for the employer in a different position would have been a reasonable alternative to quitting for claimant.

Claimant testified that he had "other stuff" with the owner before the text message incident on August 26, and that the situation had been "escalating." Audio Record at 6:41 to 7:00, 10:03. The record does not show what "other stuff" occurred, or if it contributed to claimant's decision to quit work. Audio Record at 6:41 to 7:00. The record does not show if claimant discussed with the owner the owner's behaviors or the aspects of claimant's job that dissatisfied him. If not, the record does not show why not. If claimant did, the record does not show the employer's response. The record does not show if the employer regularly sent claimant text messages that claimant found upsetting after he left work. The record does not show if the employer yelled at claimant on more than one occasion, used foul language, or called claimant names. The owner testified that he and claimant were "friends" and ate lunch together every day. Audio Record at 20:35 to 20:54. The order does not show if claimant considered the daily lunches to be cordial, or if the daily lunches contributed to a stressful working environment or his decision to leave work.

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 voluntarily left work with good cause, Order No. 19-UI-138229 is reversed, and this matter is remanded.

DECISION: Order No. 19-UI-138229 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 26, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-138229 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 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

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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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