

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1066

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 4, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 131207). Claimant filed a timely request for hearing. On October 28, 2019, ALJ Murdock conducted a hearing, and on November 1, 2019, issued Order No. 19-UI-139091, affirming the Department's decision. On November 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Julee Richards MD PC employed claimant from December 7, 2016 until September 11, 2019 as a receptionist in its office in Roseburg, Oregon. Claimant worked three days per week for the employer.

(2) On August 9, 2019, claimant's brother who lived in California was in an automobile accident while he was driving under the influence of alcohol. Claimant's brother was cited for driving under the influence of alcohol (DUI). Claimant's brother had received other DUI citations in the past.

(3) Immediately after the accident, claimant went to California to help her brother until he entered an alcohol rehabilitation center on August 17, 2019. Claimant expected him to be released on September 12, 2019. Claimant returned to Oregon and returned to work.

(4) Claimant's brother had a five-year-old child. After claimant's brother was cited for DUI, the child's mother was "threatening to take away [the brother's] visitation" with his child. Audio Record at 5:21. The mother filed a family law matter to establish a visitation plan for claimant's brother with his child.

(5) While in Oregon, claimant assisted her brother, who was still in the rehabilitation center, with coordinating his court dates and "his lawyers' appointments." Audio Record at 4:31 to 4:37. Claimant's brother assigned claimant the right to sign legal documents for him while he was in rehabilitation.

(6) Claimant's brother had depression and anxiety. Based on her conversations with her brother while he was in rehabilitation, claimant believed that her brother's depression "was getting worse" and that he

was having “severe anxiety attacks.” Audio Record at 5:01, 5:05. Claimant’s brother told claimant that he could not live alone and that he did not want to return to his house alone after rehabilitation. Claimant’s brother asked claimant to stay with him.

(7) On August 28, 2019, claimant gave the employer notice that she would quit work on September 11, 2019. Claimant did not ask the employer about options for a leave of absence from work. Had claimant asked, the employer would have considered a leave of absence for a month, but would not have allowed a longer extended leave.

(8) On September 11, 2019, claimant quit work to move to California to assist her brother with his DUI and family law cases, and to stay with him during his recovery. Claimant picked up her brother from the rehabilitation center and took him to his home in California, where she began to reside with her brother.

(9) Claimant signed an “agreement with the court” to supervise her brother’s visitation with his child. Audio Record at 11:42. The family law court entered a temporary order on September 12, 2019 stating that claimant would supervise her brother’s visitation with his child every Tuesday, Thursday, and one overnight each weekend. On October 17, 2019, the court entered a six-month, permanent order for the same supervised visitation plan.

(10) While living with her brother in California, claimant transported him to his court dates and legal appointments “with his lawyers,” and made sure he took his daily medication to treat his depression and anxiety. Audio Record at 6:33 to 6:43.

(11) Claimant’s brother did not have other family who lived in California who were willing or able to assist him. However, claimant’s mother moved temporarily from Oregon to California to help claimant’s brother. As of November 1, 2019, claimant’s mother was still in California.

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). 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. Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). “Compelling family reasons” means the illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off. OAR 471-030-0038(1)(e). “A member of the individual’s immediate family” includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

Claimant did not quit work with good cause under OAR 471-030-0038(5)(g) because her brother was not a member of her immediate family, as defined under OAR 471-030-0038(1)(f). Claimant therefore did not quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e).

It is also necessary to determine if the record shows claimant quit work when she did with good cause under OAR 471-030-0038(4). The record does not show that claimant left work on September 11, 2019 with good cause. It is undisputed that claimant provided a large amount of assistance to her brother after his August accident and DUI. However, the record does not show that claimant had no reasonable alternative to quitting work when she did to assist her brother. Claimant's obligations in her brother's situation were voluntary and, although claimant enabled preferable options for her brother, the record does not show those options were necessary or necessary for claimant to perform.

Claimant helped her brother arrange his legal appointments and court dates. The record does not show that claimant's brother was unable to accomplish these tasks on his own after September 11, 2019. In addition, claimant could have helped her brother with scheduling by telephone or electronic means from Oregon, especially since claimant apparently had power of attorney for her brother and claimant only worked three days per week for the employer. The lawyers for claimant's brother also could have assisted claimant's brother regarding his court dates. Claimant provided transportation for her brother home from rehabilitation. The record does not show that claimant could not have arranged her brother's transportation for him from Oregon without quitting her job. Moreover, the record does not show that it was necessary for claimant herself to drive her brother to and from his legal appointments and court dates.

Claimant's brother had "severe anxiety attacks" and experienced depression while in rehabilitation. The record does not show that claimant's brother required care for his medical conditions after he left rehabilitation other than to ensure that he took his medication, which claimant could have done via telephone. Claimant also could have assisted her brother by remaining in contact with him and his medical providers, which she could have done from Oregon. Claimant's brother told claimant that he could "not live alone" after rehab. The record shows that their mother from Oregon had also traveled to California. Claimant was not therefore the only person who could stay with her brother at the time claimant quit work, if that was indeed necessary for his mental health. Moreover, if claimant's brother was in need of full time care for his alcoholism, anxiety or depression, the record does not show that claimant sought other alternatives through insurance.

Claimant also moved to California to enable her brother to obtain a more desirable visitation plan with his child. While claimant repeatedly cited this as the imperative for her to be in California, her role in the family law case was voluntary. The court order named claimant as the visitation supervisor because claimant agreed to do it. Claimant did not have to agree to supervise her brother's visitation, and her brother's visitation plan did not create a grave situation for claimant. As an alternative, claimant's mother or a family member of the child's mother may have been available to supervise visitation. Most jurisdictions also provide supervised visitation options. Moreover, claimant did not know if the temporary visitation plan would become permanent until the court entered the permanent order on October 17, 2019. Claimant could have requested a leave of absence from the employer until she knew if the court would allow her to act as supervisor for the next six months. The employer indicated that it might have allowed a leave of absence for a month, but would not have allowed a longer extended leave.

For the reasons outlined above, the record does not show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have had no reasonable alternative but to leave work to assist her brother. Claimant quit work without good cause. She is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 19-UI-139091 is affirmed.

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

DATE of Service: December 13, 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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