

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0011

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 142537). The employer filed a timely request for hearing. On December 11, 2019, ALJ Frank conducted a hearing, and on December 19, 2019 issued Order No. 19-UI-141511, concluding claimant voluntarily left work without good cause. On January 2, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument in reaching this decision. Claimant also submitted written argument and additional evidence consisting of a telephone message recording. Claimant did not declare that she provided a copy of the telephone message recording to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained other information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered claimant's argument only to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Lane County Human Resources employed claimant as a senior office assistant in the employer's land management division in Eugene, Oregon from April 1, 2002 until she quit work on July 26, 2019.

(2) Claimant's mother was 88 years old and had dementia and "severe intestinal issues." Transcript at 5. Claimant's mother lived in Rhode Island and needed assistance caring for herself. During the year before claimant left work with the employer, claimant's four siblings "split[] up the duties" caring for claimant's mother. Transcript at 10.

(3) The employer approved family medical leave for claimant from February 1, 2019 until April 30, 2019 to care for her mother following an operation. After the employer approved the leave, claimant withdrew the request because her siblings were able to provide the care claimant's mother needed during that time.

(4) Claimant took approximately four weeks of medical leave during spring 2019 for her own medical condition. Exhibit 7. After taking that leave, claimant had eight weeks of potential family medical leave still available.

(5) Claimant's siblings were employed, and needed help to take care of claimant's mother. Claimant and her siblings were not able to afford to pay for professional care for claimant's mother. Claimant did not expect her mother's condition to improve due to her dementia.

(6) On July 26, 2019, claimant quit work to move to Rhode Island to help her siblings care for her mother. On August 2, 2019, claimant moved to Rhode Island to live with her mother and take care of her. Claimant assisted her mother with tasks including walking, cooking, cleaning, laundry, and attending doctors' appointments. Claimant began looking for work in Rhode Island.

(7) On September 1, 2019, claimant retired from employment with the employer.¹ Claimant was eligible to collect retirement through the Public Employees Retirement System (PERS) upon retiring from public employment in Oregon. Claimant would have quit work on July 26, 2019 to care for her mother even had she not expected to collect retirement through PERS soon after she left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause, and is not disqualified from receiving unemployment insurance benefits because of her work separation.

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. OAR 471-030-0038(5)(g) provides that leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. "Compelling family reasons" mean, in pertinent part, that "the illness or disability of a member of the

¹ There was a discrepancy between the date that claimant quit work (July 26, 2019) and the date claimant retired from public employment in Oregon (September 1, 2019) due to an error by claimant's retirement advisor.

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)(B).

Order No. 19-UI-141511 concluded that claimant did not quit work with good cause under OAR 471-030-0038(5)(g), which is the provision allowing for good cause based upon "compelling family reasons," because although the record showed that claimant quit work because of her mother's illness or disability necessitated claimant's care, the record did not show that the employer failed to accommodate a request from claimant for time off to care for her mother.² Order No. 19-UI-141511 did not address if claimant quit work with good cause under the general good cause provision, OAR 471-030-0038(4).

EAB agrees with the conclusion in Order No. 19-UI-141511 that claimant did not quit work with good cause due to compelling family reasons under OAR 471-030-0038(5)(g). The employer approved family medical leave for claimant to address her mother's medical condition in early 2019 and her own medical condition in spring 2019, and although claimant had eight weeks of potential family medical leave available when she quit, she did not ask the employer for medical leave to care for her mother before quitting. The record therefore shows that the employer did not fail to accommodate a request from claimant for time off work, and likely would have accommodated her request had she asked.

The next issue is to determine if claimant met her burden to show that she quit work with good cause under the general good cause provision, OAR 471-030-0038(4). The employer asserted by implication at hearing that claimant left work due to her eligibility for retirement benefits through PERS and to cause difficulty for the employer by leaving work at the same time as another employee who performed claimant's same duties. Transcript at 6, 17. However, the preponderance of the evidence shows that claimant quit work not for the purpose of collecting retirement benefits or "stick[ing] it to the [employer]," as the employer alleged at hearing, but to move to Rhode Island to assist with her mother's care. Transcript at 30. Claimant testified that she would have left work in Oregon and moved to help her mother even if she had not been able to collect retirement. Transcript at 6. That claimant sought work in Rhode Island after she moved corroborates claimant's assertion that she did not quit work to retire from all employment. Moreover, claimant's testimony that she left work to help her siblings care for her mother outweighs the employer's hearsay testimony that claimant quit when she did for any other reason. *See* Transcript at 4-5.

It is undisputed that claimant's mother required daily care with walking, cooking, cleaning, laundry, and attending doctors' appointments, and that claimant's siblings worked and needed assistance with the mother's care. It is also undisputed that claimant's family could not afford to pay a professional to provide that care. The employer asserted in its written argument that claimant had the reasonable alternative to remain employed and take a leave of absence from work rather than quit when she did. Employer's Written Argument. However, the record shows the health of claimant's mother, and her associated need for care, was unlikely to improve with time. Claimant had already taken a month of leave during 2019, and additional leave may therefore have been unpaid. Taking what was probably an unpaid leave of absence to travel to Rhode Island for eight weeks, only to have the same grave situation continue after that time, was not a reasonable alternative to quitting and moving in with her mother so she could provide her the daily care she needed. Under the circumstances, a reasonable and prudent

² Order No. 19-UI-141511 at 3.

person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work to care for her mother without taking additional leave first.

Claimant quit work with good cause. She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 19-UI-141511 is set aside, as outlined above.

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

DATE of Service: February 4, 2020

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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