

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0016

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 101418). Claimant filed a timely request for hearing. On December 18, 2019, ALJ K. Monroe conducted a hearing, and on December 20, 2019 issued Order No. 19-UI-141613, concluding that claimant voluntarily left work with good cause. On January 9, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument with its application for review. EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring 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).

FINDINGS OF FACT: (1) Stonemor employed claimant from September 30, 2019 to October 2, 2019 as funeral attendant for one of its funeral homes.

(2) Claimant had spondylosis in her neck and degenerative disc disease. Claimant's conditions caused her muscle weakness in her arms and decreased her ability to lift things. Claimant had no medical restrictions in place when she began working for the employer. Claimant estimated that she could lift 20 to 30 pounds with her impairments.

(3) Prior to September 30, 2019, the employer conducted an interview with claimant about the duties and responsibilities of a funeral attendant. The employer informed claimant that the duties included "removals," which entailed picking up deceased people at their place of death and bringing them back to the funeral home, and working in the funeral home during funeral services. Transcript at 20. At that time, claimant believed she would be able to perform the duties of the funeral attendant position.

(4) The employer typically sent only one funeral attendant to complete removals from institutions such as hospitals or nursing homes because the process involved pulling rather than lifting the deceased

person. For removals at private residences, the employer sent two funeral attendants so they could lift the deceased person together.

(5) Claimant and another experienced funeral attendant responded to two removal assignments on October 1, 2019. Claimant tried to lift the deceased persons. She was unable to lift much weight during the first removal, and no weight during the second removal. Claimant also realized after she began the removals that she “just couldn’t mentally handle . . . the dealing of the bodies,” including the details necessary for the removals such as wrapping each body in plastic and putting a “toe tag” on each body. Transcript at 14. All of claimant’s duties required her to be in the presence of deceased persons.

(6) Claimant did not ask the employer if there was an alternative to her having to lift bodies as one of her job duties. The employer was willing to limit claimant’s removal assignments to institutional removals where claimant could pull, rather than lift, the bodies.

(7) On October 2, 2019, claimant quit work because she was unable to lift the bodies and “couldn’t handle” working with the dead bodies. Transcript at 5.

CONCLUSIONS AND REASONING: Claimant voluntarily left work with 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 spondylosis in her neck and degenerative disc disease, a permanent or long-term “physical or mental impairment” 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.

To the extent claimant left work because she was unable to perform the lifting necessary for her job, she left work with good cause. The preponderance of the evidence shows that claimant believed when she accepted the job that she could perform the duties of the funeral attendant position. Regarding lifting bodies, claimant had no lifting restrictions from her medical providers, and her unrefuted testimony was that she did not know she would be unable to lift the bodies until she tried to do so unsuccessfully on October 1. Claimant testified, “I knew that [lifting] would be part of the job . . . , but I didn’t realize that I couldn’t lift that much until I was trying to lift somebody.” Transcript at 16. The employer’s general manager asserted that the employer could have assigned claimant only to removals at institutions, where claimant would pull rather than lift a body onto a gurney. However, based on claimant’s physical impairments and inability to lift more than 30 pounds, it is more likely than not that claimant would be equally unable to pull a person’s weight from a bed onto a gurney. Given claimant’s inability to perform the removal duties for her job, we conclude that a reasonable and prudent person with the qualities and characteristics of an individual with spondylosis in her neck and degenerative disc disease, exercising

ordinary common sense, would reasonably conclude, as did claimant, that she had no reasonable alternatives to leaving work.

Claimant also left work because, although she initially thought she could work moving deceased persons to the funeral home, “after [she] started doing it, [she] couldn’t do it.” Transcript at 7. We find claimant’s testimony credible because she explained that she “could not handle” wrapping the bodies and putting on toe tags, which she first experienced on October 1. Transcript at 7. Claimant faced a grave situation because she “just couldn’t mentally handle” working with the bodies. Transcript at 14. As the general manager testified, some people “cannot handle” the job and would not “get used to it.” Transcript at 22. Claimant would likely be in the presence of a deceased person during all of her work duties, including during removals, while she was assisting with funeral services, and any time claimant was working in the funeral home. There was therefore no reasonable alternative for claimant to avoid being around a deceased person. Given claimant’s inability to perform job duties that required her to have contact with dead bodies, we conclude that claimant had no reasonable alternatives to leaving work.

We therefore conclude that claimant showed good cause for quitting work, and she is not disqualified from receiving unemployment insurance benefits because of her work separation from the employer.

DECISION: Order No. 19-UI-141613 is affirmed.

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

DATE of Service: February 6, 2020

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

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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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