

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0026

Order No. 19-UI-141771 Modified
Request to Reopen Granted, No Disqualification

Amended Order No. 20-UI-142184 Affirmed
Request to Reopen Granted, Ineligible Weeks 40-19 through 45-19 and 47-19 through 49-19

PROCEDURAL HISTORY: On October 29, 2019, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding claimant voluntarily left work without good cause (decision # 74258), and the other concluding claimant was not available for work from September 29, 2019 until the reason for the denial had ended (decision # 74921). Claimant filed a timely request for hearing on each decision.

On November 6, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 74258 scheduled for November 20, 2019 at 9:30 a.m., and a notice of hearing on decision # 74921 scheduled for November 20, 2019 at 8:15 a.m. On November 20, 2019, claimant failed to appear at both hearings. On November 20, 2019, ALJ Snyder issued Order No. 19-UI-140028 dismissing claimant's request for hearing on decision # 74258 for failure to appear, and Order No. 19-UI-140026 dismissing claimant's request for hearing regarding decision # 74921 for failure to appear. On November 26, 2019, claimant filed a timely request to reopen both hearings.

On December 19, 2019, ALJ Frank conducted a hearing regarding decision # 74258, and on December 26, 2019 issued Order No. 19-UI-141771, granting claimant's request to reopen but affirming decision # 74258. On December 19, 2019, ALJ Frank conducted a separate hearing regarding decision # 74921, and on January 7, 2020 issued Amended Order No. 20-UI-142184, granting claimant's request to reopen and modifying decision # 74921 by concluding that claimant was not available for work from September 29 through November 9, 2019 and November 17 through December 7, 2019. On January 13, 2020, claimant filed timely applications for review of Order No. 19-UI-141771 and Amended Order No. 20-UI-142184 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 19-UI-141771 and Amended Order No. 20-UI-142184. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0025 and 2020-EAB-0026, respectively).

Based on a *de novo* review of the entire record in case number 2019-UI-01592, and pursuant to ORS 657.275(2), that portion of Order No. 19-UI-141771 allowing claimant's request to reopen the hearing decision # 74258 is **adopted**. Based on a *de novo* review of the entire record in case number 2019-UI-01590, and pursuant to ORS 657.275(2), that portion of Amended Order No. 20-UI-142184 allowing claimant's request to reopen the hearing on decision # 74921 is also **adopted**.

FINDINGS OF FACT: (1) Wells Fargo Bank NA employed claimant as a loan processor from November 10, 2016 to September 23, 2019.

(2) In December 2018, claimant's 84 year-old mother, with whom claimant lived, was diagnosed with heart failure. Her condition became progressively worse, and she was hospitalized from June 28 through July 5, 2019. After her release from the hospital, claimant's mother was mentally incoherent and otherwise unable to care for herself.

(3) Claimant applied for and received from the employer an unpaid leave of absence from work under the Family and Medical Leave Act (FMLA) to provide continuous care for her mother. By September 23, 2019, claimant had exhausted all but 24 hours of her protected leave and would not become eligible for additional protected leave hours under FMLA until approximately November 2019. Claimant had no family members in her Oregon household or even outside of California to assist her with the care of her mother. Claimant's mother needed continuous care with regard to ambulating, dressing, food preparation, taking medication, and transportation to and from medical appointments and treatment. The multiple medications claimant's mother had been prescribed and was taking limited her mental comprehension and coherence, and ability to care for herself. On September 23, 2019, claimant quit work to continue to provide the required continuous care for her mother.

(4) On October 1, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant filed claims for benefits for each of the weeks from September 29 through November 9, 2019 and November 17 through December 7, 2019 (weeks 40-19 through 45-19 and 47-19 through 49-19), the weeks at issue. The Department did not pay claimant benefits for any of the weeks claimed.

(5) Claimant continued to provide continuous care for her mother during each of the weeks at issue. On October 23, 2019, claimant told a Department representative that she hoped that her mother's condition would stabilize to the extent that claimant would not need to continue to provide such care, or would be able to arrange for someone else to provide such care, which she was investigating at the time. Throughout the weeks at issue, claimant's mother continued to improve until she was able to care for herself around mid-December 2019.

CONCLUSIONS AND REASONS: Claimant quit work when she did with good cause. Claimant was not available for work during the weeks at issue.

Voluntary Leaving. 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. Quitting work with good cause includes, *but is not limited to*, quitting due to compelling family reasons. OAR 471-030-0038(5)(g). OAR 471-030-0038(1)(e) provides, in relevant part, that 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 work.

After finding that when claimant quit her job on September 23, 2019 to care for her mother, claimant was aware that she had additional unused protected leave time remaining, Order No. 19-UI-141771 concluded that claimant quit work without good cause. That order reasoned that under OAR 471-030-0038(1)(e), claimant failed to show that she quit work for “compelling family reasons” because claimant knew she still had additional hours of protected leave available when she quit, and therefore did not establish that the employer failed to accommodate a leave request. Order No. 19-UI-141771 at 2, 4. Although the order’s analysis of claimant’s decision to quit under OAR 471-030-0038(1)(e) may have been correct, the order did not also analyze claimant’s decision to quit under the standard quit provision of OAR 471-030-0038(4). Under that provision, claimant established that she quit work when she did with good cause.

After claimant’s 84 year-old mother was released from the hospital on July 5, 2019, she was mentally incoherent and unable to care for herself. Claimant’s mother needed continuous care with regard to basic life activities including ambulating, dressing, food preparation, taking medication, and transportation to and from her medical appointments and treatment. There were no other family members in claimant’s household or even outside of California to assist claimant with her mother’s care. We infer that claimant was unable to afford in-home care because she had been on unpaid FMLA leave since early July. The multiple medications claimant’s mother had been prescribed and was taking continued to limit her mental comprehension, coherence, and ability to care for herself. Claimant only had 24 hours of unpaid FMLA leave from work remaining and available to her on September 23, 2019, far less than she needed to care for her mother, and she would not have had any additional FMLA leave hours available to her until approximately November 2019. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work under those circumstances, and claimant had no reasonable alternative but do so. Claimant therefore quit work with good cause under OAR 471-030-0038(4).

Available for Work. For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

- (a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought * * *, and
- (b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities[.] * * *

OAR 471-030-0036(3).

Claimant claimed but was not paid benefits for weeks 40-19 through 45-19 and 47-19 through 49-19. By logical extension of the holding in *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976), where, as here, claimant was not paid benefits for the weeks at issue, claimant carries the burden to show by a preponderance of the evidence that she was eligible to receive benefits for those weeks.

Here, the preponderance of the evidence shows that claimant was not able to report for all suitable work opportunities, particularly full-time ones, during any of the weeks at issue. Claimant admitted that she continued to provide continuous care for her mother during each of those weeks. Audio Record at 23:00 to 23:30. She lived alone with her mother and did not have any family members in state to assist her. On October 23, 2019, before decision # 74921 denying her benefits was issued, claimant told a Department representative that she hoped that her mother's condition would stabilize to the extent claimant would not need to continue to provide such care or would be able to arrange for someone else to provide such care, which she was investigating at the time. Although claimant asserted at hearing that, by October 1, 2019, her mother's condition had improved to the extent that claimant was able to accept all suitable work opportunities, that assertion was not persuasive. Audio Record at 23:00 to 26:00. Claimant later modified her statement by stating that her mother's condition had improved to that extent by the date of the hearing, December 19, 2019. Audio Record at 23:00 to 26:00. Accordingly, it may be inferred from the record as a whole that claimant was not capable of reporting for all suitable work opportunities during the weeks at issue due to her need to provide continuous care for her elderly and ill mother.

Claimant is not eligible for benefits for the weeks including September 29 through November 9, 2019 and November 17 through December 7, 2019 (weeks 40-19 through 45-19 and 47-19 through 49-19) because she was not available for work during those weeks.

Conclusion. Order No. 19-UI-141771 is modified. Claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation. However, Amended Order No. 20-UI-142184 is affirmed. Claimant is not eligible for benefits for the weeks including September 29 through November 9, 2019 and November 17 through December 7, 2019 (weeks 40-19 through 45-19 and 47-19 through 49-19).

DECISION: Order No. 19-UI-141771 is modified, as outlined above.¹ Amended Order No. 20-UI-142184 affirmed.

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

DATE of Service: February 10, 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

¹ 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.

'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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.