

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0076

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause, and was disqualified from benefits effective November 3, 2019 (decision # 103828). Claimant filed a timely request for hearing. On January 10, 2020, ALJ Shoemake conducted a hearing, and on January 16, 2020 issued Order No. 2020-UI-142864, affirming the Department's decision. On January 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) KE McKay's Market of Coos Bay, Inc. employed claimant as a deli worker from June 21, 2017 to November 8, 2019.

(2) On September 18, 2018, claimant experienced an on-the-job shoulder injury. Claimant required surgery to repair the injury, but was able to perform light duty work pending surgery. At all relevant times, light duty work remained available to claimant.

(3) In approximately December 2018 or January 2019, claimant filed a worker's compensation claim regarding her shoulder injury. The employer's worker's compensation carrier concluded that although claimant's shoulder strain injury was work-related, the severity of the injury and need for surgery were the result of pre-existing conditions. The worker's compensation carrier repeatedly denied the claim.

(4) Claimant's private health insurance carriers also refused to cover claimant's surgery because the carriers determined that the injury had been work-related. Claimant was insured under the Oregon Health Plan but lost coverage because her income was too high to qualify for coverage. She then had insurance through the employer's carrier, but surgery was not covered by that carrier. Claimant continued to claim that the injury was work-related and continued to appeal the worker's compensation carrier's claim denial. As of approximately June 2019, after the worker's compensation and private carriers denied claimant's claim, claimant could no longer afford to go to the doctor for additional treatment.

(5) Claimant's worker's compensation attorney advised claimant that if she continued fighting the worker's compensation matter she could spend years appealing without a resolution, and without the surgery she needed to recover from her injury. Claimant wanted to have the shoulder surgery that would allow her to return to full duty. The attorney advised claimant to settle the claim with the employer in exchange for enough money to pay for the surgery. Claimant wanted to keep her job, but one term of the settlement agreement would be that claimant had to agree to resign from her job.

(6) Claimant's worker's compensation attorney subsequently negotiated a settlement agreement between claimant and the employer whereby the employer would agree to pay claimant \$15,000.00, and claimant would agree to resign from her job effective November 8, 2019. Claimant and the employer both agreed to the settlement agreement. Pursuant to that agreement, effective November 8, 2019, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause, and is not disqualified from receiving benefits.

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.

The order under review concluded that claimant quit work without good cause, reasoning that although claimant's shoulder condition was grave, since claimant had light duty work available to her at all times, and had not checked with her private insurance carrier to see if they would cover the surgery after her worker's compensation claim was denied, claimant had reasonable alternatives to quitting her job. Order No. 20-UI-142864 at 2. However, the record does not support the conclusion that claimant had reasonable alternatives to quitting work when she did.

At the time claimant left work, she had been experiencing an injured shoulder for over a year, had been unable to seek any treatment for the injury for approximately five months, and could not afford to pay for treatment or surgery without insurance. Claimant knew she would not be able to seek treatment or have surgery to repair her injured shoulder unless and until she settled her worker's compensation insurance claim. Needing medical treatment while being unable to either obtain any insurance coverage for it or pay for treatment herself was a grave situation.

Claimant's alternatives at the time she quit work were to either continue working on light duty indefinitely, with an untreated and untreatable injury, while her attorney continued to try to appeal the worker's compensation claim, or to enter into a settlement agreement with the employer that would resolve her worker's compensation claim. Continuing to work for an indefinite period of time while injured and unable to obtain continued treatment or surgery for the injury was not a reasonable alternative, however. Claimant's attorney advised claimant to negotiate a settlement that would provide

her with enough money to pay for the medical treatment she needed. Under the circumstances described at the hearing, no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work with an untreated injury, and against the advice of her worker's compensation attorney, rather than quitting work to accept a settlement that would allow her to get treatment for the injury.

Claimant quit work with good cause. She therefore is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 20-UI-142864 is set aside, as outlined above.

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

DATE of Service: March 3, 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 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

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 الاستئناف 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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