

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0090

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 111914). Claimant filed a timely request for hearing. On January 8, 2020, ALJ Jarry conducted a hearing, and on January 9, 2020, issued Order No. 20-UI-142336, affirming the Department's decision. On January 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Ordell Construction LLC, located in Eugene, Oregon, employed claimant, last as a payroll administrator, from August 2016 until November 15, 2019.

(2) On October 19, 2019, claimant's brother seriously injured their father for which he was imprisoned. Claimant's father was hospitalized in California, where he lived, and his injuries required surgery to reconstruct his leg and ankle, which took place on October 24, 2019. On October 29, 2019, her father's surgeon informed claimant that her father would not be released from the hospital unless he had someone to assist him because he could not walk and was on "heavy painkillers." Audio Record at 7:45 to 8:45. She was further informed that that her father would be unable to care for himself without assistance or work for six months to a year. Claimant was the only remaining family member, other than her brother who was incarcerated, and there was no one else available in the area to assist her father.

(3) On or about October 29, 2019, claimant requested time off work to travel to California to assist her father. Claimant had no paid time off (PTO) available and asked the employer if it would grant her additional PTO in advance of it accruing, which the employer denied. The employer also denied

claimant's request to telecommute and work from California. The employer did not discuss with claimant the possible option of requesting Family Medical Leave Act (FMLA) leave from work. If claimant had qualified for such leave, the employer probably would have granted claimant the maximum of 12 weeks of unpaid leave.

(4) Because neither claimant nor her father could afford private care, and all of their medical and financial resources had been exhausted, claimant believed she had no alternative but to quit her job and move to California to care for her father. On November 1, 2019, claimant gave the employer two weeks' notice of her intent to quit and her Eugene, Oregon apartment complex notice that she was moving out.

(5) On November 15, 2019, claimant quit work and moved to California to care for her father and assist with his rehabilitation. As of January 2020, claimant remained in California caring for her father.

CONCLUSIONS AND REASONS: 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). 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). Under that provision, "[c]ompelling family reasons" includes the circumstance where "[T]he 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).

Order No. 20-UI-142336 concluded that claimant quit work without good cause and was disqualified from receiving benefits effective November 10, 2019. The order reasoned that, while claimant established that the illness or disability of an immediate family member necessitated care by another, claimant failed to show that the employer did not accommodate her request for time off because she quit without requesting a medical leave of absence. Order No. 20-UI-142336 at 3. However, the order mistakenly assumed that the only manner in which claimant could have established good cause for leaving work due to the need to provide care for her father was the "compelling family reasons" provision of OAR 471-030-0038(5)(g). Nothing in the rule suggests that the compelling family reasons provision is exclusive or that the general good cause provision found in OAR 471-030-0038(4) might not be applicable when OAR 471-030-0038(5)(g) is not.

Here, the record shows that when claimant quit work, her father's need for daily care and assistance created a grave situation for claimant. By asking the employer if she could telecommute from California or obtain PTO in advance, both of which would have allowed her to both remain employed and provide care for her father for some period of time, claimant explored the only alternatives to quitting that were apparent to her. The record fails to show that claimant knew or should have known that seeking FMLA leave was an alternative to leaving work, and that the employer would have allowed her to take such a leave in lieu of quitting. A claimant must know or have reason to know an alternative exists before it

may be considered a reasonable alternative to leaving work. *See Krahn v. Employment Dep't.*, 244 Or App 643, 260 P3d 778 (2011).

Moreover, to the extent that 12 weeks of unpaid FMLA leave may have been available to claimant had she known of it and requested it, the record shows that such a request likely would have been futile for her. The employer's witness stated that no accommodation other than FMLA leave would have been granted to claimant and the record shows that 12 weeks of leave likely would have been an insufficient period of time away from work for claimant to satisfy her father's need for care. Taking leave without pay for an unknown and possibly protracted period is not a reasonable alternative to quitting work. *See, Taylor v. Employment Division*, 66 Or App 313 (1984), *Sothras v. Employment Division*, 48 Or App 69 (1980).

Claimant established good cause for leaving work when she did under OAR 471-030-0038(4) and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation from the employer.

DECISION: Order No. 20-UI-142336 is set aside, as outlined above.¹

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

DATE of Service: February 28, 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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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.



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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