

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0092

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 22, 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 receiving benefits effective October 27, 2019 (decision # 174434). Claimant filed a timely request for hearing. On January 10, 2020, ALJ Monroe conducted a hearing, and on January 17, 2020 issued Order No. 20-UI-142981, affirming the Department's decision. On January 29, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Raina Parsons employed claimant from June 2019 to October 27, 2019. Claimant worked for the employer as a caregiver, providing care to the employer's husband, who was also claimant's brother. Claimant's employment was coordinated through a county caseworker, and the employer paid claimant through "Premier," which administered benefits for U. S. Veterans.

(2) Claimant's brother had ALS. He was paralyzed and generally confined to his bed or a wheelchair. He needed assistance with his activities of daily living. Claimant's job was to provide him with that assistance. When claimant began working for the employer, claimant and her brother made a verbal agreement about her duties, hours, and other terms of employment.

(3) Claimant found it "extremely stressful" to provide care for her brother, and thought their relationship as siblings affected how he behaved toward her. Transcript at 7, 26. Claimant's brother was easily frustrated, particularly if things did not go the way he wanted them to go or if his daily routines were disrupted. He became frustrated when claimant did not arrive at a certain time, "wasn't always the nicest" toward claimant, and sometimes called her names. Transcript at 26, 40. In approximately mid-

October, claimant's brother became upset with claimant and fired her. Claimant and the employer later resolved their issues and claimant resumed working.

(4) On October 23, 2019, claimant's brother "started in on" her within a half hour after she arrived for work, until she "was on the verge of crying and – and probably losing it." Transcript at 6. Claimant felt things were "extremely stressful" that day, and left the house to take a break and calm herself down. Transcript at 6. Within about ten minutes, she still felt so upset that she felt she needed to leave for the day. At that time, claimant sent a text message to her brother stating that she was "taking a mental day" and asking him to call her if he wanted her to come back the next day. Transcript at 6.

(5) Claimant's brother and the employer did not immediately receive the text message from claimant, and assumed that she had abandoned her job by walking off the job. The employer contacted the benefits case manager that coordinated care for claimant's brother and Premier to report that claimant had left.

(6) At approximately 2:30 a.m. on October 24th, the employer and claimant's brother received claimant's text message and realized claimant had not actually quit her job. They did not respond to the text. They discussed how to proceed, and decided that claimant's employment terms were lax because she was family. They decided to write an agreement defining claimant's duties, specifying her start and end times, and establishing other, more structured, terms of employment, to provide them with more predictability as far as when claimant would work and what duties she would perform.

(7) Approximately two days later, claimant had not heard from her brother and the employer. She called her brother, but her brother was busy and said he would call her back later. Claimant's brother and the employer did not call claimant until the following week, when the employer called to tell claimant that she had some papers for claimant to sign. On October 28, 2019, the employer sent claimant the employment agreement they had drafted.

(8) Claimant did not agree with the terms listed on the agreement. She did not think it was accurate as far as the duties, hours, and schedule constraints, thought there was not enough time to do all the duties listed, and she was concerned that there were no provisions for overtime or health insurance benefits.

(9) Claimant exchanged some text messages with the employer about the terms of the agreement. Claimant asked to modify the agreement and add overtime and health insurance benefits, and the employer said that claimant's brother's benefits would not allow them to do that. Claimant and the employer did not continue to communicate about the agreement after that.

(10) Claimant was willing to continue working for the employer, and willing to help her brother without being an employee, but was not willing to sign the employment agreement. The employer was willing to continue employing claimant, but only if she would agree to the employment agreement. The employer assumed that claimant's employment would end because she did not sign the agreement. Claimant thought that she would eventually discuss things further with the employer and her brother, but she and the employer "ended up not talking" and "just kind of left [it] at that." Transcript at 9, 21, 39.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At all relevant times, claimant could have continued to work for the employer for an additional period of time. She could have continued to work on October 23rd if she had chosen not to leave. She likely could have continued to work thereafter by initiating contact with the employer or her brother, or reporting to work. She also could have continued to work on or after October 28th by signing the employment agreement, or following up with the employer and her brother with respect to negotiating about the terms of the agreement the employer had the ability to change (i.e. hours, duties, attendance). It was claimant's unwillingness to continue working on October 23rd, and unwillingness to respond or follow up with the employer thereafter that ultimately led to the work separation. The work separation likely occurred the week of October 27th, given that the employer sent claimant the employment agreement on October 28th and the parties then "ended up not talking" and "just kind of left [it] at that" during that week. Because the record suggests it is more likely than not that claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving under OAR 471-030-0038(2)(a).

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). "[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.

Claimant did not establish good cause for quitting work. Although she would have preferred her job to allow overtime and provide health insurance benefits, and it was often extremely stressful for claimant to work for her brother, claimant's testimony at the hearing indicated that at all relevant times she was willing to continue helping her brother, whether as an employee or just as his sister. Claimant's ongoing willingness to work for the employer as her brother's caregiver suggests that she probably did not consider the situation so grave that neither she, nor a similarly situated reasonable and prudent person, would have no alternative but to leave work because of it. Claimant therefore did not show that she had good cause to quit work, and she is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-142981 is affirmed.

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

DATE of Service: March 5, 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 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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