

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0219

Reversed & Remanded

PROCEDURAL HISTORY: On January 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from benefits effective November 17, 2019 (decision # 81741). Claimant filed a timely request for hearing. On February 19, 2020, ALJ Snyder conducted a hearing, and on February 21, 2020 issued Order No. 20-UI-144940, affirming the Department's decision. On March 10, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based upon the record. If claimant wants the additional evidence she submitted with her argument to be admitted into evidence, she may request the ALJ do so during the remand hearing, in accordance with the rules for doing so that will be set forth in the notice of hearing.

FINDINGS OF FACT: (1) Cardinal Services employed claimant as a relationship manager, assigned to Paladin Data Corp., from May 1, 2017 to November 26, 2019.

(2) Prior to mid-2019, claimant experienced a violent attack. In mid-2019, claimant took approximately two months of leave from work. During that time, claimant was diagnosed with post-traumatic stress disorder (PTSD). In September 2019, claimant notified Paladin of her diagnosis. She told the employer that she needed to attend weekly therapy appointments. She also asked to be shielded from aggression at work because executives regularly yelled while at work. Paladin agreed.

(3) In September 2019, claimant had to sit in on a meeting between her supervisors and two others, during which the salespersons yelled and argued with each other. Claimant had a panic attack and could not stop crying because everyone was yelling and the tension and hostility was palpable. Audio recording at 20:40.

(4) Between the date of that meeting and October 2019, claimant experienced two additional panic attacks at work.

(5) In late September 2019, at the employer's request, claimant traveled to Bend, Oregon for a training. Bend was over 200 miles away from claimant's residence, and she stayed in a hotel. Claimant believed her expenses to attend that employer-mandated training would be reimbursed.

(6) After the training claimant asked for reimbursement. The employer told claimant her expenses were not reimbursable. Claimant filed a complaint, but the individual working with her stopped responding to her calls, and claimant did not get any resolution. On approximately October 2, 2019, as a result of the reimbursement situation, claimant experienced her fourth panic attack at work in about a month's time.

(7) Between October 2, 2019 and November 14, 2019, claimant continued to experience a toxic work environment. On a daily basis she perceived that the employees were unhappy. Every day she dealt with not being good enough in her supervisor's and the owner's eyes, and all of her complaints about the way her supervisor was handling things and lying "fell on deaf ears." Audio recording at 17:15. Claimant felt that continuing to work for Paladin was making her "fall apart" to work there. Audio recording at 17:45.

(8) On November 14, 2019, claimant gave notice that she was quitting work in two weeks because the work environment was too toxic, and she could no longer tolerate the hostility at work. Effective November 26, 2019, claimant quit her job.

(9) Claimant would have quit her job effective November 26th even if Paladin had reimbursed her for the September 2019 travel expenses. Claimant had never received resolution to her ongoing concerns about the toxicity of the work environment. Neither she nor the employer clearly understood to whom claimant should complain about her working conditions at Paladin.

CONCLUSIONS AND REASONS: This matter is reversed, and remanded for additional proceedings.

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 PTSD, 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.

The order under review concluded that claimant voluntarily left work without good cause, reasoning that claimant quit work because Paladin refused to reimburse her travel costs, which was not a grave situation, and that claimant was not experiencing a toxic work environment at the time she quit work. Order No. 20-UI-144940 at 3. However, claimant did not quit work immediately after Paladin refused to reimburse her travel costs, and testified she would have quit work when she did even if she had been reimbursed because of the way the ongoing working conditions between October and November 26th made her feel. Because the record lacks evidence about those working conditions and claimant's

condition between those dates, additional evidence is required to reach a decision as to whether or not claimant had good cause to quit work.

Between September 2019 and October 2019, claimant had four panic attacks at work. The record was not developed with respect to the circumstances that triggered claimant's second and third panic attack. Claimant indicated that at the time of her first panic attack she could not stop crying, but the record otherwise lacks any details about the nature of claimant's panic attacks, what her symptoms were, how they made her feel, and whether and how the panic attacks affected claimant's work and her personal life. Claimant did not testify, and the ALJ did not ask, what claimant did to try to avoid having panic attacks at work, and if her efforts were successful or partially successful. Claimant did not testify, and the ALJ did not ask, how the travel reimbursement situation triggered a panic attack, how that panic attack affected her, or how long the panic attack affected her. The record does not show, and the ALJ did not ask, whether claimant took action or complained further to Paladin or the employer after any of her panic attacks, or requested help after each panic attack to change her working conditions to minimize the likelihood of additional work-related panic attacks. The record does not show whether claimant's therapist or another medical provider suggested she do anything in particular to avoid panic attacks, or made any specific recommendations with respect to claimant's working conditions or employment.

After claimant's fourth panic attack, claimant continued to work for the employer without apparently experiencing any additional attacks. She testified, however, that on a daily basis she perceived that the employees were unhappy, felt like nothing she did was good enough for her supervisor and the owner, and felt all of her complaints about her supervisor and their lying "fell on deaf ears." She testified that she felt that it was making her "fall apart" to work at Paladin. Claimant did not testify, however, and the ALJ did not ask, why she perceived all the employees were unhappy, how that perception manifested itself, and how that affected her. The record lacks any examples of instances in which she felt like nothing she did was good enough for the supervisor and owner between October 2nd and November 26th, why she perceived that, how the perception manifested itself, and how that affected her. The record lacks information about instances in which claimant observed the supervisor lying, and how that affected her. Claimant also did not describe, and was not asked to describe, how or why claimant felt she was "fall[ing] apart," and how those feelings manifested themselves, and how they affected her. Finally, claimant did not testify, and the employer did not ask, why claimant felt her working conditions were so bad that she had no reasonable alternative but to quit work.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to quit work, Order No. 20-UI-144940 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-144940 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 15, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-144940 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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