

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0265

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 4, 2020, 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 unemployment insurance benefits effective December 8, 2019 (decision # 93955). Claimant filed a timely request for hearing. On March 10, 2020, ALJ Janzen conducted a hearing at which the employer failed to appear, and on March 11, 2020, issued Order No. 20-UI-145971, affirming the Department's decision. On March 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Barbers (Oregon) employed claimant as a barber from June 2018 until December 12, 2019.

(2) Claimant had ankylosing spondylitis (AS) which generally affected claimant's eyes and hips.

(3) In August 2019, one of the employer's other employees was transferred to the location where claimant worked. Claimant worked all of her four shifts per week with the coworker. After working together for about two months, claimant began to feel a "negative effect on [her] mental health," caused by the coworker's "comments and attitude and overall demeanor." Audio Record at 9:19 to 9:40. Claimant felt that the coworker was "super negative and overbearing." Audio Record at 9:41 to 9:44.

(4) During October 2019, claimant experienced "flare ups" of her AS, causing her to experience inflammation in her eyes and hips. Audio Record at 11:38. Claimant sought medical treatment. Her doctor told claimant "situational stress caused from work" likely caused the "flare ups." Audio Record at 11:41 to 12:07. Claimant's doctor advised her to limit her stress "as best as possible." Audio Record at 24:14.

(5) Claimant complained about the coworker's conduct and demeanor approximately four times to the manager, but the coworker's conduct and demeanor did not improve. Other employees also complained to the manager. The manager and the coworker were close friends. Claimant did not speak to the coworker directly about how the coworker's conduct affected claimant.

(6) The coworker continued to speak to claimant in a “rude,” “cold,” and “short” manner during everyday conversation in the workplace. Audio Record at 13:25 to 14:08. The manner in which the coworker treated claimant caused claimant “a ton of anxiety [and] a lot of stress.” Audio Record 14:21 to 14:23.

(7) The employer was not willing to allow claimant to transfer to a different work location where she would not have to work with the employee who was rude to her.

(8) On December 12, 2019, claimant reported for work. The manager and the rude coworker were also working that day. Claimant felt that she “received the cold shoulder” from both the manager and the coworker. Audio Record at 10:15. Neither greeted claimant, and when claimant asked the coworker about a client who arrived at the shop, the coworker “rolled her eyes” at claimant, and walked away. Audio Record at 10:49. The manager told claimant to disregard any gossip she heard in the shop.

(9) On December 12, 2019, claimant quit work because the stress from her working conditions caused her anxiety and caused her to experience AS symptoms.

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). “[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 ankylosing spondylitis, 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 quit her job without good cause. The order reasoned that claimant did not provide specific examples of how her coworker was rude to her, and that claimant had the reasonable alternative of talking to the coworker about how the coworker’s behavior affected claimant before she quit. Order No. 20-UI-145971 at 2. The record does not support those conclusions.

To the extent claimant quit work due to health concerns, she quit work with good cause. The record shows that claimant faced a grave situation due to the effect of the work-related stress on her medical condition. Claimant experienced AS “flare-ups” that she and her doctor believed were caused by work stress. Although the record does not show that claimant’s doctor recommended that she quit work, the doctor advised her to limit her stress “as best as possible.” The record supports the conclusion that claimant had no reasonable alternative but to quit work on December 12 in order to reduce her stress. It is undisputed that the employer would not transfer claimant to another shop. Although claimant had the alternative of talking to the coworker about the coworker’s conduct, the record shows it was not a reasonable alternative under the circumstances. Claimant asserted that she did not complain to the coworker directly about her behavior because she “did not know how the [coworker] would react,” and

the prospect of confronting the coworker caused claimant anxiety. Audio Record at 15:24 to 15:45. The record shows that more likely than not, complaining directly to the coworker would have caused claimant more anxiety and would have been futile where claimant had complained multiple times already to the manager, and the coworker's conduct did not improve. Complaining to the coworker directly was also futile where the manager apparently did not actively support claimant's position that the coworker behaved inappropriately at work.

On this record, claimant's health situation was a reason of such gravity, that claimant did not have any reasonable alternatives to quitting work when she did. Claimant therefore showed good cause for quitting work, and is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 20-UI-145971 is set aside, as outlined above.

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

DATE of Service: April 28, 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 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 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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