

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0337

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 28, 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 February 2, 2020 (decision # 111515). Claimant filed a timely request for hearing. On April 13, 2020, ALJ Murdock conducted a hearing, and on April 15, 2020 issued Order No. 20-UI-148107, affirming the Department's decision. On May 4, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Loras In-Home Care, LLC, employed claimant as an administrative assistant from July 2014 until February 5, 2020. Claimant's job responsibilities included caregiving to the employer's clients. During all relevant times, two managers, "C" and "D", supervised claimant in the performance of her duties.

(2) On or about September 26, 2019, claimant suffered a job-related injury, which required medical treatment, and for which she received workers' compensation benefits.

(3) On November 25, 2019, claimant's medical provider issued claimant a "Work Status Notification" document (doctor's note) indicating the medical provider's recommendation that claimant refrain from lifting greater than 50 pounds while working. Exhibit 1. Claimant provided the doctor's note to C, and C later provided the doctor's note to D. At all relevant times, the owner of the company, "K", was not aware of the lifting restriction imposed by claimant's medical provider.

(4) Between November 25, 2019, and February 5, 2019, claimant's caregiving shifts involved no lifting.

(5) On February 5, 2020, C assigned claimant to work with a "lift assist" client from 3:00 p.m. to 4:00 p.m. Audio Record at 8:28. Claimant was unwilling to work with a lift assist client on her own because "lift assist" client responsibilities potentially included transferring, ambulation, and/or bathing the client, which would cause her to exceed her 50 pound lifting restriction, without the assistance of another employee. Claimant attempted to inform C about her concerns about the one-hour caregiver assignment,

and her unwillingness to do that assignment, but C “would not talk to [claimant].” Audio Record at 10:12. At approximately 3:00 p.m., C spoke to D because claimant remained in the office and had not reported for her assignment. D entered claimant’s office and “started yelling at [claimant] in [her] office.” Audio Record at 10:23.

(6) At 3:10 p.m., K telephoned claimant in claimant’s office, while D was still in the office. During her conversation with K, claimant tried to remind K that K had previously instructed claimant that he did not want her covering caregiver shifts because he wanted her to learn bookkeeping. K instructed claimant to “either quit or cover the shift.” Audio record at 6:10. During claimant’s conversation with K, D exited claimant’s office and “was freaking out; he was throwing things in the lobby.” Audio Record at 13:10. Claimant told K what D was doing in the lobby and K responded that, “he has issues with his daughter.” Audio Record at 14:28. D’s actions, including throwing things in the lobby, caused claimant to “fear for her safety.” Audio Record at 13:15. Claimant told K she quit because she feared for her safety. Claimant never told K during their telephone conversation about her restriction on lifting over 50 pounds.

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). 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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

The order under review concluded that claimant left work without good cause because although claimant was physically incapable of performing the “lift assist” caregiver shift due to her recent injury, claimant failed to inform the owner of her medical limitation during their telephone conversation, and she failed to “simply declin[e] to report for duty at the client’s location....” Order No. 20-UI-148107 at 3. The order reasoned that both of these options were “reasonable alternatives” to quitting, and that because “the circumstances did not necessitate her immediate resignation,” claimant had failed to show good cause for voluntarily leaving her employment. Order No. 20-UI-148107 at 3. However, the record evidence does not support the order’s conclusions.

Claimant left work with good cause. The record establishes that claimant provided her doctor’s note to her manager, C. In so doing, claimant placed the employer on notice of her lifting restriction as, under the circumstances, the notice she provided to C is imputed to D¹ and K.² From the point that claimant

¹ The record establishes that C provided D a copy of the doctor’s note, making D aware of claimant’s restrictions as well.

² See *Safeway Stores, Inc. v. Angus*, 112 P. 3d 474, 476, 200 Or. App. 94, (2005), quoting *Colvin v. Industrial indemnity*, 301 Or. 743, 747, 725 P.2d 356 (1986) (emphasis in original) (A Workers’ Compensation appeal, stating, “Generally, in order that knowledge be imputed to the employer, the person receiving it must be in some supervisory or representative capacity,

provided notice, until February 5, 2020, the employer did not assign claimant any caregiving shifts that involved lifting. The preponderance of the evidence demonstrates that the employer was aware of claimant's 50-pound lifting restriction, and acted in accordance with it until February 5, 2020.

On February 5, 2020, the employer assigned claimant a "lift assist" client. The employer's decision to assign this client to claimant was objectively unreasonable because the employer knew about claimant's 50-pound lift restriction, the employer had previously adhered to that restriction, and the employer knew, or should have known, that by directing claimant to perform the February 5, 2020 assignment, they were risking potential injury to claimant and/or their client. Although claimant attempted to address her concerns about performing the assignment, and her unwillingness to do so, the employer ignored her concerns. D then escalated the pressure placed upon claimant to perform the assignment by yelling at claimant and throwing things in the lobby, and K gave claimant an ultimatum to either perform the task or quit.

Claimant's injury-related concerns were legitimate and the employer's collective reaction to her refusal to perform the assignment was unreasonable because by yelling at claimant, and placing an ultimatum upon her, the employer increased the likelihood that claimant would choose to perform the assignment, risking injury to herself and the client. Given the circumstances that occurred on February 5, 2020, including the employer's sudden indifference to claimant's medical restrictions, the risk of injury to claimant and the employer's client, D's aggressive reaction to claimant's refusal to perform the assignment (including yelling at claimant and throwing things in the lobby), and K's ultimatum to perform the assignment or quit, no reasonable and prudent person of normal sensitivity, exercising normal common sense would have felt that they had any other reasonable alternative but to leave work.

The preponderance of the evidence demonstrates that claimant's decision to voluntarily leave work was supported by good cause, and she is therefore not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-148107 is set aside, as outlined above.

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

DATE of Service: June 1, 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

such as foreman, supervisor, insurance adjuster, personnel worker, corporate officer, physician or nurse. Knowledge of or notice to a mere co[-]employee is not sufficient. *But any degree of authority that places a [person] in charge of even a small group of workers is enough to confer this representative status.*"

'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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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