

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0392

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits effective October 27, 2019 (decision # 85359). Claimant filed a timely request for hearing. On May 1, 2020, ALJ Janzen conducted a hearing, and on May 5, 2020 issued Order No. 20-UI-149243, affirming the Department's decision. On May 18, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) IVI Hotel Management employed claimant as a housekeeper from September 28, 2018 to October 29, 2019.

(2) In October of 2019, claimant's father, who resided in Arizona, became seriously ill, and his doctors did not believe he had much time to live. Claimant notified the employer of this situation and of her need to travel to Arizona to see her father and assist her family.

(3) The employer investigated whether claimant was eligible for a Family Medical Leave Act (FMLA) or Oregon Family Leave Act (OFLA) leave of absence under the circumstances and determined that she did not meet the hours of service requirements for such leaves. However, the employer offered claimant a personal leave of absence from November 1 through December 16, 2019, which would be unpaid after she used her remaining accrued leave of approximately 10 hours. Exhibit 1. The employer's leave offer requested sufficient notice from claimant, if she decided not to return, to allow the employer to find a replacement.

(4) On October 21, 2019, claimant declined to accept the offered leave and gave the employer notice of her intent to resign effective October 30, 2019. Exhibit 1. Claimant declined the offered leave because she was unsure of how long she would need to remain in Arizona. If asked, the employer would have considered allowing claimant to remain in Arizona after December 16, 2019 depending upon its business needs.

(5) On October 22, 2019, claimant's father passed away. Claimant and her brother decided to proceed with their plans to return to Arizona to assist the family with funeral arrangements and settling their father's estate. Claimant decided not to pursue the offered leave of absence because she was unsure of how long it would take to settle her father's estate.

(6) Claimant's last day of work with the employer was October 29, 2019. On October 30, 2019, claimant and her brother flew to Arizona.

(7) On November 23, 2019, claimant returned to Oregon because her grandfather became ill and she wanted to spend time with him over the Thanksgiving holiday. After approximately two weeks, claimant returned to Arizona because her mother was not handling claimant's father's passing very well, and her father's estate had not yet been settled.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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.

Claimant quit work on October 29, 2019 to return to Arizona to assist her family in mourning her father's death, making funeral arrangements and settling her father's estate because she did not know how long those tasks would take. Although claimant's family circumstances on and after the date of her father's passing were grave, the duration of those circumstances was indefinite and claimant had the option of accepting a leave of absence from the employer that would have lasted until December 16, 2019 and possibly longer. That claimant was able to leave Arizona, return to Oregon on November 23, 2019 for approximately two weeks demonstrated that it was not necessary for claimant to remain in Arizona beyond December 16, 2019 to assist her family. Moreover, claimant did not assert or show that she could not have assisted in finishing the tasks that caused her to go to Arizona while remaining in Oregon after a period of approximately one and one-half months.

Under various circumstances, the Oregon Court of Appeals has held that a protracted, unpaid leave of absence is not a reasonable alternative to leaving work and becoming unemployed and that a claimant who has quit under such circumstances has quit with good cause. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension). Here, although claimant had approximately ten hours of paid accrued leave available when she quit, most of her leave of absence would have been unpaid. However, claimant indicated that both

she and her brother left for Arizona to assist with handling the affairs of her father's estate and she failed to show that it would not have been feasible for her to assist in those matters after December 16, 2019 while remaining employed in Oregon, particularly if her brother remained in Arizona. Viewed objectively, the record shows that claimant's leave of absence likely would not have been indefinite and protracted. Claimant had the reasonable alternative of accepting the employer's leave of absence unless and until it became apparent that it was necessary for claimant to remain in Arizona.

Claimant did not show good cause for leaving work when she did and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 20-UI-149243 is affirmed.

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

DATE of Service: June 17, 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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