

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0469

Reversed & Remanded

PROCEDURAL HISTORY: On April 24, 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 March 1, 2020 (decision # 101937). Claimant filed a timely request for hearing. On June 10, 2020, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on June 11, 2020, issued Order No. 20-UI-150964, affirming the Department's decision. On June 16, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) DD & MH Provider of Oregon LLC employed claimant from September 2019 until March 5, 2020. Claimant worked as an assistant to the employer's owner.

(2) Beginning in December 2019, claimant began to feel "very, very depressed" due to the owner's inconsistent directions and the lack of feedback from the owner regarding claimant's job performance. Audio Record at 5:00.

(3) In February 2020, claimant found a second job, but did not plan to quit her job with the employer until she knew she would earn sufficient income from her second job alone to pay her bills. The new job was to begin on March 9, 2020 and paid less per hour than the employer.

(4) On March 2, 2020, claimant felt sick, but worked for half of her shift. On March 3, 2020, the owner left for vacation, to return to on March 9, 2020. Although claimant did not feel well, she continued to work until March 5, 2020.

(5) On March 5, 2020, claimant left work early to obtain treatment for her illness. The owner learned that claimant had left work early and sent claimant multiple text messages, including one that stated that claimant was not permitted to "just come and go as [she] pleased," and another stating that claimant must act "professional." Audio Record at 7:42 to 7:51. The owner told claimant that claimant should not report to work on March 6, 2020. Claimant was upset by the owner's text messages and quit work to protect her health and to begin work for a new employer.

(6) Claimant's new employer was located in the Portland metropolitan area. Claimant's weekly benefit amount was \$257.¹ Claimant was not going to be paid tips at her new job.

CONCLUSIONS AND REASONS: Order No. 20-UI-150964 is set aside, and this matter remanded for further development of the record.

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 with an permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) 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.

Additionally, OAR 471-030-0038(5)(a) provides that, if an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work left.

Claimant testified that she "had to quit" work on March 5, 2020 "due to [her] mental and physical health." Audio Record at 14:35 to 14:37. Claimant also testified that she had been "very, very depressed," and "felt a lot of emotions" because she perceived that the owner was not "happy" with claimant's work. Audio Record at 5:00 to 5:34. Claimant also described feeling "defeated" at work. Audio Record at 5:59. Although claimant made these references to her health, the record does not show if claimant had a permanent or long-term physical or mental impairment that would modify her burden of proof so that she 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 record also fails to show the details of how claimant's working conditions affected her health or if there were reasonable alternatives to quitting work that claimant could have pursued to protect her health. The record shows that the owner "talked . . . down to" claimant, and that on March 5, she was "blowing up [claimant's] phone" with text messages that upset claimant. Audio Record at 16:57, 7:42. The record also shows that the owner told claimant she should not work on March 6, but does not show how the owner's conduct on and before March 5 affected claimant's health.

¹ EAB has taken notice of this fact, contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

Claimant also left work, in part, to begin another job on March 9. The record is not clear if claimant would have left work on March 5 had she not already planned to start a second job on March 9, 2020. Moreover, the record under review did not assess whether claimant had good cause to leave work to accept an offer of other work, and the record is insufficient to make that determination. The record does not show if the offer of work was definite, was reasonably expected to continue, or if it paid in excess of claimant's weekly benefit amount. Minimum wage in the Portland metropolitan area was \$12.50 per hour at the time claimant quit, but the record does not show how many hours claimant worked when she began work for the new employer, or how many hours she expected to work after her training period ended.

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 quit work with good cause, Order No. 20-UI-150964 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-150964 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: July 22, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150964 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

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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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