

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0489

Reversed & Remanded

PROCEDURAL HISTORY: On March 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective February 2, 2020 (decision # 72414). Claimant filed a timely request for hearing. On June 3, 2020, ALJ Snyder conducted a hearing, and on June 11, 2020 issued Order No. 20-UI-150963, affirming the Department's decision. On June 23, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) McMenamins Inc. employed claimant, most recently as a facilities manager, from 2017 until February 2, 2020.

(2) Claimant's job included maintenance work and lifting. Lifting caused claimant back pain.

(3) Due in part to staffing levels, claimant had a high workload that he often was unable to complete. Claimant had complained many times to his managers that he was unable to complete his duties. The managers tried to address claimant's workload. One of the managers offered to assist claimant with lifting if claimant needed.

(4) On February 2, 2020, claimant quit work because his work duties caused him back pain.

CONCLUSIONS AND REASONS: Order No. 20-UI-150963 is reversed and this matter remanded for another hearing and order on whether claimant had good cause to quit working for the employer when he did.

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 a 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.

Order No. 20-UI-150963 concluded that claimant quit work without good cause reasoning that although claimant’s back pain may have amounted to a grave situation for claimant, it did not create a circumstance of such gravity that there was no reasonable alternative for claimant but to leave work when he did.¹ The order reasoned that claimant had the reasonable alternatives of accepting assistance from his supervisor when his duties involved lifting, or of requesting a leave of absence from work.² However, additional information is needed to determine whether claimant had good cause to quit work when he did.

Claimant testified that he had back surgery before he worked for the employer, and that more recently, he knew he had “messed [his] back up,” but “hadn’t been to a doctor yet.” Transcript at 9. The record does not show the nature of claimant’s back condition and sufficient detail to determine if it was a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). The record does not show if claimant received medical care or advice regarding his back while he worked for the employer. If claimant did not seek medical attention, the record does not show why not, other than claimant’s assertion that he did not have medical insurance. Transcript at 10. The record does not show if claimant filed a worker’s compensation claim regarding his back.

Claimant testified that he told the property manager and the corporate facilities assistant manager that “his back was killing [him].” Transcript at 10. Claimant also testified that “everybody knew” about his back pain. Transcript at 9. Despite claimant’s assertions, the record is not sufficiently developed to determine if claimant informed his employer that his work duties caused him back pain or if claimant made a request for reasonable accommodation due to his back condition. The record does not contain the details from the conversations when claimant allegedly told his supervisors about his back pain and how it related to his work duties. The record does not show what work activities, other than lifting, were limited due to claimant’s back condition. The record does not show whether claimant could have performed his duties part time, with modifications, or with assistance from his supervisor, as his supervisor apparently offered.

The record does not show if claimant understood he could request a leave of absence from work, or if such leave would be paid or unpaid. The record does not show if taking time off work or a leave of absence was a reasonable alternative to quitting, or if it would have been futile. In other words, the record does not show if claimant would be able to return to his work duties after a leave of absence and conduct his duties without back pain, or if after a leave of absence, claimant would return to the same working conditions that caused him to take the leave in the first place.

¹ Order No. 20-UI-150963 at 3.

² Order No. 20-UI-150963 at 3.

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 working for the employer with good cause, Order No. 20-UI-150963 is reversed, and this matter is remanded for another hearing and order.

DECISION: Order No. 20-UI-150963 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 29, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150963 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 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

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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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