

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0545

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective March 15, 2020 (decision # 72140). Claimant filed a timely request for hearing. On July 15, 2020, ALJ Hoppe conducted a hearing, and on July 21, 2020 issued Order No. 20-UI-152388, concluding that . On July 24, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant was injured in a motor vehicle accident in February 2019.

(2) In October 2019, claimant began working for Federal Express Corp. (the employer) as a courier, a position which required claimant to drive a delivery vehicle for the employer.

(3) In or around January 2020, claimant realized that she had been experiencing post-traumatic stress disorder (PTSD)-like symptoms as a result of her February 2019 accident. Claimant's driving duties triggered these symptoms—such as anxiety—and caused her to feel unsafe while working. Those symptoms were compounded when the employer dispatched claimant to areas with which she was unfamiliar, and in vehicles with mechanical issues.

(4) Claimant was unable to pay for treatment of these symptoms on her own, and at the advice of her attorney did not pursue treatment in connection with her injury case because of uncertainties regarding that case. Claimant did not obtain an official diagnosis of PTSD, or otherwise seek treatment, for these symptoms.

(5) In January or February 2020, claimant asked her supervisor Ken if she could transfer to a non-driving position within the company. Ken told claimant that she would have to wait until a suitable position was available before she could transfer.

(6) Claimant voluntarily resigned from her position with the employer on or around March 21, 2020.

CONCLUSIONS AND REASONS: Claimant quit 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 symptoms she believed to be caused by PTSD, 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.

29 C.F.R. §1630.2(h) defines “physical or mental impairment” as:

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The order under review acknowledged that “it seems likely that many reasonable individuals in claimant's circumstances would quit,” and that “the good cause determination can be made from the standpoint of a reasonable person with a psychological *disorder* such as PTSD.” Order No. 20-UI-152388 at 3 (emphasis in original). It concluded, however, that while “...claimant believes she has PTSD as a result of her prior accident... she has not established that her stress exists at the level of being a diagnosed disorder.” Order No. 20-UI-152388 at 3. Neither OAR 471-030-0038(4) nor 29 CFR §1630.2(h), however, require a formal diagnosis in order to find that the individual in question has a permanent or long-term physical or mental impairment. From a practical standpoint, whether or not claimant actually has symptoms consistent with or sufficient for a diagnosis of PTSD is entirely independent of whether or not a medical provider has made such a diagnosis.

Further, it is unnecessary to render a lay diagnosis here in order to find that claimant suffered from *some* mental or psychological disorder; claimant's uncontroverted testimony regarding her symptoms is sufficient to establish that she meets the broad definition under 29 C.F.R. §1630.2(h)(2). Finally, while claimant testified that she only recognized the symptoms of suspected PTSD starting in January 2020, she also testified at the hearing—some six months later—that she was still anxious about driving for the

same reasons. The preponderance of the evidence therefore suggests that claimant's "mental impairment" was "long-term" within the meaning of OAR 471-030-0038(4).

As the order under review acknowledged, a reasonable person with a psychological disorder such as the one from which claimant suffered would likely quit under the circumstances in which claimant was working. In particular, the nervousness, anxiety, and fear that claimant ascribed to her driving duties constituted a sufficiently grave reason for quitting. The general and consistent distress that these sensations seemed to cause claimant would likely be enough to lead a reasonable person to quit. Moreover, claimant's frequent nervousness while operating a commercial vehicle suggests an actual physical danger to both herself and anyone who shared the road with her. Simply put, claimant's untreated PTSD-like symptoms rendered her unable to safely perform her job.

Following the finding above, the record does not indicate that any reasonable alternatives to quitting were available to claimant. The order under review argues that claimant could have spoken to the employer about working conditions or her stress; and that she did not establish that doing so would be pointless. Order No. 20-UI-152388 at 3. The record does not support this conclusion. Indeed, both claimant and Ken (claimant's supervisor and the employer's witness) testified that claimant *did* attempt to address some of her concerns with management; and that, for instance, Ken consequently tried where feasible to send claimant out on routes within Oregon—with which claimant was more familiar—rather than Washington—which she was less familiar and which therefore caused her more anxiety. The record does not indicate that this was effective in mitigating claimant's driving-related anxiety, or that any action that management could have taken would have done so.

Broadly, two other potential reasonable alternatives were explored in the testimony: treatment of claimant's anxiety and related symptoms, and the possibility of transfer to a non-driving position. Claimant was not able to obtain treatment prior to quitting because she could not afford it. Even if she had, however, the record does not establish that this would have been a reasonable alternative to quitting. In light of the essentially daily danger that claimant was in due to her driving-related anxiety, it would not have been reasonable for her to continue working for an unknown period of time while she waited for the treatment to adequately address her symptoms.

Regarding a transfer to a different position, the parties seemed to disagree as to whether or not claimant would—as she claimed—have had to quit her job as a courier and then wait six months before applying for a non-driving position. Even assuming that no such policy applied to claimant, however, the record contains no clear indication that a non-driving position would have been available to claimant. The employer's witness testified that transferring within the company was "definitely an option" to claimant. Transcript at 40-41. He gave no indication, however, that any suitable positions were actually open at the relevant time. Further, claimant testified that, prior to quitting, she did ask her supervisor about transferring to a non-driving position and that he told her that she would have to wait until a position became available. Transcript at 44-45. Thus, the preponderance of the evidence indicates that a transfer was not actually an option for claimant when she quit, and therefore was not a reasonable alternative.

For those reasons, claimant quit work with good cause. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 20-UI-152388 is set aside, as outlined above.

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

DATE of Service: August 20, 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 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

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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