

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0593

Reversed & Remanded

PROCEDURAL HISTORY: On May 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective, December 29, 2019 (decision # 75545). Claimant filed a timely request for hearing. On August 5, 2020, ALJ Williams conducted a hearing, and on August 10, 2020, issued Order No. 20-UI-152975, affirming the Department's decision. On August 31, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: On August 4, 2020, claimant submitted a 74-page exhibit to the employer's representative, Equifax, and to the Office of Administrative Hearings (OAH) for consideration by the ALJ at the August 5, 2020 hearing. OAH received the exhibit on August 4, 2020 and the ALJ identified and marked the exhibit as Exhibit 1 at the outset of the August 5, 2020 hearing. Audio Record at 11:00 to 12:15. However, at that time the employer's representative asserted that they had not yet received the exhibit. Audio Record at 12:15 to 12:45. For that reason, the ALJ sustained the employer's objection to the admission of Exhibit 1 into the record and the exhibit was not considered. Exhibit 1 consists of documents describing events between September 2018 at July 2019 that led to claimant's decision to resign, claimant's treatment by a mental health therapist during 2019 and various communications between claimant and the employer regarding claimant's work environment and coworker interactions, claimant's disabilities and his resignation.

OAR 471-041-0090(1) (May 13, 2019) provides that EAB may consider information not received into evidence at the hearing if necessary to complete the record. The documents submitted by claimant are relevant and material to claimant's work separation, and their admission into evidence is necessary to complete the record in this case, particularly given the effect claimant's self-reported mental health condition had on his ability to provide testimony and focus at hearing. Due process requires that claimant have the opportunity to explain the information in Exhibit 1, and that the employer have the opportunity to respond to all new information. Accordingly, claimant's documents, marked by the ALJ

as Exhibit 1, are admitted into the record to complete the record.¹ Any party that objects to the admission of Exhibit 1 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, Exhibit 1 will remain in the record.

The parties will also have the opportunity to offer new documents into evidence at the remand hearing, by following the instructions that will be included with the notice of the remand hearing. If the parties have questions about offering such documents into evidence, they should contact the Office of Administrative Hearings.

FINDINGS OF FACT: (1) Cascadia Behavioral employed claimant as a registered nurse working as a nurse care study coordinator from April 23, 2018 to January 2, 2020.

(2) Years prior to claimant's employment, claimant was diagnosed with bi-polar disorder and received continuing treatment for the disorder throughout claimant's employment. Claimant also lost one eye prior to his employment, and had been diagnosed with, and received continuing treatment for hypertension.

(3) From early on in his employment, claimant believed that he was treated differently from other workers by his supervisors. He believed his "cognitive and mental health disabilities were largely discounted" and he was given inadequate support and supervision in performing his work. Claimant believed the employer's lack of support and supervision minimized his effectiveness and created negativity toward him by coworkers. Exhibit 1 (January 1, 2020 resignation letter). He also believed that his attempts to remedy those circumstances were ignored and often ridiculed by his managers. The lack of support and supervision that he perceived and the employer's response to his attempts to rectify it created stress for him and caused him to experience physical symptoms such as insomnia, nausea, increased hypertension, and difficulty concentrating.

(4) On September 11, 2019, claimant experienced an incident at work. A patient with a history of drug use and assaultive behavior met with claimant and became upset with him because claimant would not sign a letter the patient needed. The patient did not verbally threaten claimant but moved toward him in a threatening manner and pointed to one of the patient's own eyes. Claimant believed the patient's conduct represented a threat to injure claimant's remaining eye, which caused claimant substantial stress, emotional upset, nausea, and anxiety about returning to work and possibly encountering that patient.

(5) When claimant returned to work on September 12, 2019, he sought a meeting with the employer's trauma team about the prior day's incident, but his request was declined.

(6) On September 13, 2019, claimant spoke with his direct supervisor, who had heard about the September 11 incident from others and criticized claimant for not speaking to her about it. Exhibit 1 at 70. Claimant told her that he was "falling apart" over the incident and that the lack of supervision and support he perceived caused him to feel "shamed" and "victimized." Exhibit 1 at 70. Later that day,

¹ If the employer has not yet received Exhibit 1, the employer should contact EAB and request a copy of the exhibit. EAB will then transmit and/or mail a copy to the employer.

claimant learned from the human resources department that his access to certain medical records had been suspended, which made it impossible for him to provide necessary patient documentation to providers, a function of his job as a study coordinator. Before leaving work that day, some debris from the ceiling in claimant's office fell into claimant's eye, irritating it and causing him pain.

(7) On September 17, 2019, claimant called in sick and did not report for work. He had been experiencing lingering pain in his eye, increased blood pressure, chills, and night sweats.

(8) On September 18, 2019, claimant went to urgent care for his symptoms and was told he might be experiencing "PTSD" and had "extremely high blood pressure." Transcript at 18. The provider submitted a worker's compensation claim form on claimant's behalf for sleep difficulties, nausea, and hypertension. The provider authorized claimant to be on medical leave from work from September 18, 2019 to October 5, 2019. On September 19, 2019, a worker's compensation claim form was submitted on claimant's behalf for his eye pain and headaches.

(9) On or about October 5, 2019, claimant's worker's compensation claims were denied. On or about October 7, 2019, the employer's HR department communicated with claimant by email and sent claimant Family and Medical Leave Act (FMLA) paperwork because claimant had not yet been released to return to work. On October 28, 2019, the employer received medical certification for claimant's leave. Claimant's physician backdated claimant's leave to September 18, 2019. Claimant's FMLA leave was scheduled to end on December 10, 2019.

(10) The HR department also communicated with claimant by email because his physician had indicated to the employer that a return to work was possible on January 2, 2020. The employer offered claimant an extension of his leave to January 2, 2020 under the Americans with Disabilities Act (ADA) after claimant's physician provided the necessary documentation for such leave. The leave was approved, but scheduled to end on January 2, 2020.

(11) While claimant was on medical leave, he communicated with the employer's human resources staff and requested clarification from the employer's chief human resources officer about workplace changes he believed were necessary before he could safely return to work. Claimant believed his work environment was unsafe and hostile, and it lacked the supervision needed to make it safe and non-hostile. The staff person claimant spoke to told claimant she would speak to the chief human resources officer about claimant's requested changes. Exhibit 1 at 20. However, claimant never received a response from human resources chief about his inquiry. Exhibit 1 at 20.

(12) On January 1, 2020, claimant submitted a letter of resignation, effective January 2, 2020, to the employer's human resources department. Claimant resigned because he believed the work environment had become progressively hostile toward him and because he had not received any communication from the employer about what he believed were necessary changes that needed to be made before he would feel safe to return to work.

CONCLUSIONS AND REASONS: Order No. 20-UI-152975 is reversed and this case is remanded to OAH 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) (September 22, 2020). “[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 bipolar disorder, hypertension, and had lost an eye, permanent or long-term “physical or mental impairment[s]” 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 impairments would have continued to work for their employer for an additional period of time.

Order No. 20-UI-152975 concluded that claimant quit work without good cause, reasoning:

Claimant left work because the changes he wanted made at the workplace had not occurred. The changes claimant wanted at the workplace had not occurred because he had not met with his supervisors to discuss the desired changes. Claimant believed he would not be safe at work unless the supervision he needed was in place... Although claimant faced a grave situation, he did not explore reasonable alternatives to quitting. The employer advised claimant that it would discuss his workplace concerns with him after he returned from medical leave. A reasonable and prudent person with claimant’s mental impairment would have returned to work to discuss the workplace accommodations he needed with the employer prior to leaving work. Because he refused to try a reasonable alternative before quitting, claimant has not established good cause.²

However, the order under review was reached without consideration of Exhibit 1. Exhibit 1 shows that while claimant was on medical leave, he communicated with the employer’s human resources staff and requested clarification from the employer’s chief human resources officer about workplace changes he believed were necessary before he could safely return to work. Exhibit 1 at 20. However, the record fails to show if claimant understood that the employer was not willing to discuss his workplace concerns and requested changes until after he returned to work. After the employer’s witness testified that “we let him know” that the employer was unwilling to discuss requested changes until after claimant returned to work, the ALJ asked the witness, “did [claimant] understand that?” to which the witness replied “I don’t know.” Transcript at 48. On remand, additional inquiry is necessary to determine why, if the witness did not know if claimant understood that the employer was not willing to discuss requested changes until after he returned to work, additional communications with claimant clarifying that condition were not made. Additional inquiry regarding whether claimant understood that condition or whether any of the “30 emails” the witness stated claimant sent during his leave reflected such an understanding also is necessary. Transcript at 49.

The record shows that the employer granted claimant leave under the ADA after his FMLA leave ran out. On remand, additional inquiry is necessary to determine whether required discussions regarding reasonable workplace accommodations under the ADA are required to take place in person before any leave under that law is exhausted. The record also fails to show whether claimant’s physician indicated to the employer that there were workplace accommodations that needed to be made, in light of

² Order No. 20-UI-152975 at 5.

claimant's bipolar disorder or PTSD, for claimant to return to work. On remand, the record must be developed as to whether a reasonable and prudent person with bipolar disorder and PTSD would consider returning to work without accommodations in place as a reasonable alternative to quitting work under the circumstances described in this case.

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 had good cause for leaving work when claimant did, Order No. 20-UI-152975 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-152975 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 8, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-152975 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 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.

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