

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0740

Reversed & Remanded

PROCEDURAL HISTORY: On October 19, 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 October 16, 2020 (decision # 94146). Claimant filed a timely request for hearing. On November 16, 2020, ALJ Schmidt conducted a hearing at which the employer failed to appear, and on November 20, 2020, issued Order No. 20-UI-156687, modifying the Department's decision by concluding claimant quit work without good cause but was disqualified from receiving benefits effective August 25, 2019. On November 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument with the application for review. Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Braganza Pearl Teas employed claimant as a barista from March 2017 until approximately August 30, 2019.

(2) In 2018, claimant experienced depression and anxiety and began treating with a psychotherapist, who diagnosed and treated claimant for those conditions. A source of claimant's anxiety and depression was her work environment, in which she often interacted with rude customers. Claimant often discussed the stress of her work environment, and leaving work because of the stress, with her therapist.

(3) During 2019, claimant experienced increasing anxiety at work, which sometimes resulted in breakdowns while on her way to work and at work. Claimant discussed with her managers how the work environment was affecting her and that she was considering leaving her job.

(4) Throughout 2019, claimant worked a second job walking other peoples' dogs.

(5) On or about August 16, 2019, claimant gave the employer notice of her intent to quit work on August 30, 2020. Claimant believed she could support herself on the income she received from her second job while she searched for other work.

(6) On August 30, 2020, claimant quit work due to the anxiety caused by her work environment, because she had a second job, and because she wanted to seek other work alternatives.

CONCLUSIONS AND REASONS: Order No. 20-UI-156687 is reversed and 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). Under OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work¹ to seek other work. Claimant suffered from depressions and anxiety for which she received treatment beginning in 2018, likely 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.

Order No. 20-UI-156687 concluded claimant quit work without good cause, reasoning, in relevant part, that claimant quit work because of her "increasing anxiety at work and dissatisfaction with her unstimulating and repetitive workplace" and that the evidence was insufficient to show that her situation was so grave that a similarly situated person with her impairments would leave work. Order No. 20-UI-156687 at 2-3. However, the record was not sufficiently developed to reach that conclusion.

At hearing, when asked why claimant did not remain with the employer until she found replacement work, claimant responded that because of her second job as a dog walker, under the circumstances it was not worth it for her to remain with the employer. Audio Record at 14:30 to 15:00. However, the record was never developed regarding her typical hours and income with the employer and the hours, wage, and income claimant would have derived from her second job once claimant left her job with the employer. Without that information, the record fails to show whether claimant had good cause for

¹ In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual, and the distance of the available work from the residence of the individual. ORS 657.190.

leaving work under OAR 471-030-0038(4) when considering all of her circumstances. Nor was the record sufficiently developed regarding the effects, if any, claimant's work anxiety had on her outside of work. No inquiry was made into whether claimant's work stress caused such things as sleep disturbances, nausea or other health effects, or what, if any, detrimental effects claimant's work stress had on claimant's personal relationships, at home or otherwise. Accordingly, the record was not sufficiently developed to determine whether remaining at work posed a risk to claimant's overall health. On remand, the record must be developed on all of these topics to ensure that all of the facts necessary to determine claimant's eligibility for benefits are considered.

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-156687 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-156687 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: December 24, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-156687 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

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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