

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0020

Reversed & Remanded

PROCEDURAL HISTORY: On October 16, 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 20, 2019 (decision # 153253). Claimant filed a timely request for hearing. On December 10, 2020, ALJ Frank conducted a hearing, and on December 18, 2020 issued Order No. 20-IU-157895, modifying decision # 153253 and concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 3, 2019. On January 7, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

The parties may offer new information such as the information claimant submitted as written argument 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) Jubitz Corporation employed claimant as a cashier and cleaning person from August 2019 until November 5, 2019. Claimant worked two shifts per week, on Monday and Tuesday nights.

(2) On Monday, October 21, 2019, claimant's mother passed away.

(3) Claimant was scheduled to work on Monday, October 21, 2019. Prior to her shift on October 21, 2019, claimant called her direct supervisor and told her that she was "unfit to come to work" due to a death in her family. Audio Record at 10:02.

(4) On Tuesday, October 22, 2019, claimant attended a work meeting from 1:00 p.m. to 2:30 p.m. and worked the overnight shift from 9:53 p.m. until 5:51 a.m. on Wednesday, October 23, 2019.

(5) Claimant suffered a “breakdown” due to the loss of her mother. Audio Record at 9:50. Claimant was “a mess,” “unable to eat or drink,” and was assisted by “the suicide prevention people.” Audio Record at 11:14 to 11:20.

(6) The employer had a policy that allowed up to two weeks of bereavement leave even if an employee did not qualify for federal or state protected family medical leave.

(7) On November 4, 2019, claimant was scheduled to work, but did not report to work.

(8) On Tuesday, November 5, 2019, the employer processed claimant’s work separation. Exhibit 1.

(9) On November 17, 2019, claimant fractured her hip. Before November 17, 2019, claimant did not have a hip injury or other physical issues that prevented her from performing her job duties for the employer. On or about November 18, 2019, claimant called and told her direct supervisor that she had broken her hip. Claimant was not able to work at that time due to her hip fracture.

CONCLUSIONS AND REASONS: Order No. 20-UI-157895 is set aside and this matter remanded for further development of the record.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

The nature of the work separation was disputed at hearing and the record does not contain sufficient information to conclude if claimant quit or was discharged. The employer’s witness, who had no firsthand communication with claimant after her hire, testified based on one internal personnel document that claimant called and resigned on November 4, 2019 because “the work is too much for her.” Exhibit 1. Claimant, however, contended that she did not quit. The order under review apparently gave greater weight to the employer’s one hearsay document than to claimant’s testimony, and concluded that claimant quit work on November 4, 2019. Order No. 20-UI-157895 at 2-3. The record shows that the employer processed claimant’s work separation on November 5, 2019. Exhibit 1. However, the record lacks sufficient evidence to support a finding either that claimant quit or that she was discharged.

On remand, the record must be developed to show when claimant experienced the “breakdown” that impeded her ability to return to work, and when claimant was mentally able to return to work again. Claimant attended a workplace meeting and worked one shift after her mother’s death. The record does not show what, if anything, claimant told her supervisor or other employer representatives about her mother during that meeting or shift, or at any later date. Although claimant had not worked for the employer long enough to qualify for family medical leave under Oregon or federal law, the employer allowed up to two weeks of bereavement leave. However, the record does not show if the employer informed claimant that she could take bereavement leave.

Claimant's employment ended on November 5, 2019. The record does not show if claimant recalls contacting the employer on November 4, 2019 when claimant did not work, or on November 5, 2019. If claimant recalls contacting the employer, the record should be developed regarding what was stated during that conversation. The record must be developed to show if the employer ended claimant's employment because claimant did not report to work, and if so, if claimant was discharged for misconduct even considering her mental state at the time.

The employer processed claimant's work separation on November 5, 2019. The record does not show if or how the employer notified claimant that it had processed claimant's work separation. Claimant contacted the employer after she broke her hip on November 17, 2019. Claimant testified that she spoke with her direct supervisor at that time because, "maybe in my mind I thought I'd go back to work, but it certainly wasn't at that time after the hip." Audio Record at 19:23 to 20:02. Based on this testimony, the record must be developed to show when claimant understood that her employment with the employer had ended. The record does not show if claimant discussed her hip fracture with the supervisor when she spoke with her after her hip fracture. The record does not show if the employer would have permitted claimant to take medical leave until she recovered from her hip fracture, even though it may not have been legally obliged to do so based on claimant's short term of employment.

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 or the employer discharged claimant, and based on that determination, whether claimant was disqualified from receiving benefits under ORS 657.176, Order No. 20-UI-157895 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-157895 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: February 11, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-157895 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

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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