

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0051

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 19, 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 unemployment insurance benefits effective March 15, 2020 (decision # 140819). Claimant filed a timely request for hearing. On January 7, 2021, ALJ Smith conducted a hearing, and on January 8, 2021 issued Order No. 21-UI-158901, affirming decision # 140819. On January 25, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: 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. EAB considered the portions of claimant's written argument that were based on the record.

FINDINGS OF FACT: (1) Illahe Vineyards and Winery Inc. employed claimant as a direct sales manager for approximately three years until March 17, 2020.

(2) Prior to when claimant began working for the employer, she was diagnosed with polymyalgia rheumatica and giant cell arthritis, both of which are autoimmune disorders. For much of that time until January 2020, claimant's disease-management regimen included a prescription of prednisone.

(3) Claimant's work for the employer involved several different duties, including computer work that was typically performed sitting at a desk, and work in the employer's tasting room, which was performed while standing and walking.

(4) In January 2020, claimant stopped taking prednisone. About two or three weeks afterward, claimant began experiencing back pain that left her unable to sit for long periods of time. The back pain interfered with claimant's ability to sit at a desk and perform computer work. When claimant experienced such pain, she would typically need a day to recover from it. Transcript at 19.

(5) On February 17, 2020, as a result of the back pain she was experiencing, claimant informed the employer that she would be resigning, but would continue to work until the employer found a replacement for her. Claimant offered to continue working for the employer in the winery's tasting room, as she could perform that work without sitting down. However, the employer did not believe that it could afford to hire someone to replace claimant while retaining claimant solely for wine tastings, and did not tell claimant that they would permit her to remain employed in this limited capacity. Had claimant not told the employer that she was resigning, the employer would have permitted claimant to continue working in the same capacity she had been working in previously.

(6) Claimant's physician did not advise claimant to quit her job. Prior to quitting, claimant did not consider asking the employer for accommodations, such as a standing desk, more breaks, or similar, that might have allowed claimant to continue performing her work on the computer without enduring back pain. Claimant did not ask the employer for accommodations because she "did not feel that it was something that [she] could ask for." Transcript at 29. The employer had previously granted similar requests made by other employees. On a prior occasion, claimant had requested that the employer provide her with a chair for work. The employer directed claimant to obtain the chair herself, but then paid for the chair.

(7) On March 17, 2020, claimant quit work due to her back pain and because the employer had not yet given claimant an answer as to whether they would permit her to remain working for them in the tasting room.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

Nature of the work separation. 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).

Claimant asserted in her written argument that she "quit *some* work for [the employer]," suggesting that she believed she did not fully sever the employment relationship. Claimant's Written Argument at 1 (emphasis in original). However, the record shows that on February 17, 2020, claimant advised the employer that she intended to stop performing her computer-based work once a replacement was found, but that she was willing to continue performing work in the employer's tasting room. The employer declined to respond to claimant's offer of a modified work position. For that reason, on March 17, 2020, claimant left work with the employer. Because claimant could have worked for the employer for an additional period of time but chose not to do so, the work separation was a voluntary leaving that occurred on March 17, 2020.

Voluntary quit. 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 polymyalgia rheumatica, 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.

Claimant testified that she quit work because a substantial portion of her work duties required her to sit at a desk and perform work at a computer, which as a result of her chronic medical conditions caused her to suffer from back pain that would take her a day to recover from. Therefore, claimant’s circumstances were grave. However, the record shows that reasonable alternatives to quitting were available to claimant. For instance, claimant testified that it “didn’t bother” her to work while “standing upright [or] walking around,” and the employer testified that they would have purchased a standing desk for claimant had she requested one. Transcript at 31, 9. Claimant explained that she did not make such a request because she “did not feel [she] could ask” for accommodations from the employer, explaining that when she had previously requested a chair, the employer had directed claimant to obtain it herself. However, claimant’s concern is contradicted both by the employer’s testimony that they had provided accommodations for other employees’ needs in the past, and claimant’s own testimony that the employer had paid for the chair she obtained for work. Claimant did not offer evidence to show or suggest that such accommodations would not have been sufficient to allow her to continue working at the computer. In the absence of such evidence, and in light of the fact that claimant felt comfortable continuing to work on her feet, it is reasonable to infer from the record that some combination of workplace accommodations would have been sufficient to allow claimant to continue working at the computer without debilitating pain and requesting them from the employer would not have been futile. Claimant therefore has not met her burden to show that no reasonable person with polymyalgia rheumatica would have continued to work for the employer for an additional period of time after March 17, 2020.

For these reasons, claimant quit work without good cause, and is disqualified from receiving benefits effective March 15, 2020.

DECISION: Order No. 21-UI-158901 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 26, 2021

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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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