

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0072

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 92839). The employer filed a timely request for hearing. On January 12, 2021, ALJ L. Lee conducted a hearing, and on January 14, 2021 issued Order No. 21-UI-159192, reversing decision # 92839 and concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 15, 2019. On February 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Each party submitted written argument. EAB considered the argument submitted by claimant to the extent it was based on the hearing record. The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented it 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.

FINDINGS OF FACT: (1) The employer employed claimant from 2017 until December 20, 2019. Claimant worked for the employer as a general manager of a shopping center.

(2) In the spring of 2019, claimant became pregnant with her second child. The child was due to be born in early January 2020. In late summer 2019, claimant started discussions with the employer regarding the length of her maternity leave. The employer's maternity leave policy was to provide 12 weeks of leave under the Family and Medical Leave Act (FMLA).

(3) Claimant believed she would need a leave period that was longer than 12 weeks for two reasons. First, claimant had ankylosing spondylitis, an arthritic condition that caused claimant's recovery following the birth of her first child to be difficult, which made claimant think that recovering from the birth of the second child would also be difficult. Second, claimant believed that daycares would not accept a child less than 12 weeks old. Claimant planned to start maternity leave

a week before the child's due date, so claimant did not think 12 weeks of leave would provide enough time for the child to be old enough to get into daycare.

(4) In early September 2019, claimant requested 20 weeks of maternity leave, which the employer rejected. Although the employer knew about claimant's arthritic condition generally, the employer understood claimant to have requested 20 weeks of leave "for strictly personal reasons, for having a sufficient amount of time at home with a newborn, not because [claimant] didn't think she could return due to medical reasons." Transcript at 34. The employer was also not aware of claimant's belief that 12 weeks of leave would not provide enough time for her child to be old enough to get into daycare.

(5) In mid-September 2019, claimant informed the employer that she would voluntarily quit effective December 20, 2019 rather than take the 12 weeks of leave under the employer's policy. Claimant decided not to take the 12 weeks of leave because she thought it would damage her reputation if she took the leave, and then afterward discovered she needed more time off and had to quit working because the employer would not extend her leave.

(6) Had claimant taken the 12 weeks of leave the employer offered and "at the end of her 12 weeks . . . something out of her control happened," the employer would have provided claimant at least two more weeks of leave and may have provided as many as eight additional weeks of leave. Transcript at 40.

(7) Claimant worked through her notice period and voluntarily left work on December 20, 2019.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without 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) (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 ankylosing spondylitis, 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's situation was not of such gravity that she had no reasonable alternative but to leave work when she did. Claimant quit because she believed a 12-week leave was insufficient because she thought she would need longer than 12 weeks to recover given her arthritic condition, and she believed her child would not be old enough at the end of 12 weeks to be placed in daycare. While these circumstances may have presented claimant with a grave situation, claimant did not have good cause to quit because she failed to pursue reasonable alternatives. Rather than quit on December 20, 2019, claimant could have taken the 12 weeks of leave and assessed near the end of the leave period whether she was well enough to return to work, and whether childcare was available for her child. If claimant was not well enough to

return to work or childcare was unavailable, she could have requested more leave time and if the employer was unable to grant more time off, claimant could have quit then. More likely than not, however, the employer would have granted such a request as the record shows that had “something out of her control happened” and claimant asked for more time off, the employer would have provided claimant two more weeks of leave and may have provided as many as eight additional weeks of leave. Instead of pursuing this reasonable alternative, claimant simply quit.

Claimant acknowledged that she failed to pursue this alternative but argued that the alternative was unreasonable because it would have damaged her reputation had she taken the 12 weeks of leave, and then discovered she needed more time off and quit anyway because the employer would not extend the 12 weeks. However, claimant failed to show by a preponderance of evidence how taking leave intending to return to work, asking for additional time if she was unable to do so, and then quitting if her request was denied would have harmed her reputation at all, or any more than quitting when and how she actually did. In any event, as mentioned above, the record shows that had claimant taken the 12 weeks of leave but then asked for an extension because of something beyond her control, the employer more likely than not would have provided additional leave.

Claimant failed to establish that no reasonable and prudent person with the characteristics and qualities of an individual with ankylosing spondylitis would have continued to work for the employer for an additional period of time. Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Order No. 21-UI-159192 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 9, 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.surveymoz.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 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 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 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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