

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0089

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 11, 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 June 28, 2020 (decision # 130741). Claimant filed a timely request for hearing. On January 26, 2021, ALJ Micheletti conducted a hearing, and on January 28, 2021, issued Order No. 21-UI-159957, affirming the Department's decision. On February 8, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Albertsons LLC employed claimant as a pharmacy technician in Eugene, Oregon, where she resided, from May 17, 2020 until June 30, 2020.

(2) In 2017, claimant was diagnosed with post-traumatic stress disorder (PTSD) and received treatment for the disorder during 2020.

(3) In May 2020, claimant missed approximately two weeks of work while she was quarantined after suspected exposure to COVID-19. In June 2020, claimant missed approximately ten days of work due to a back injury that did not occur at work.

(4) On Monday, June 22, 2020, claimant was scheduled to work. Before her shift began that morning, claimant's father suffered a severe heart attack. Her father's caregiver notified claimant of her father's medical situation shortly after the caregiver arrived at her father's Coos Bay, Oregon residence. Claimant notified her store manager that she would not be at work due to her father's health emergency, and that she did not know how long she would be away from work. Although the store manager expressed concern about claimant's recent absences from work, the manager told claimant the employer could cover her shifts that week, but needed to hear from claimant as soon as possible about the following week, which included July 4, 2020, because he expected it to be a busy week. Transcript at 38-39. The employer had scheduled claimant to work on June 30, July 1 and July 2, 2020.

(5) After a short time in a Coos Bay, Oregon hospital, claimant's father was transferred to a Eugene, Oregon hospital for specialized medical treatment available at that hospital.

(6) On June 24, 2020, claimant contacted her store manager and told him that "she still didn't kind of really know anything" about how long she would need to miss work due to her father's health condition. Transcript at 39. The store manager asked claimant again to let him know "sooner than later" about how long she would need to miss work in case the employer had to make arrangements to cover her shifts during the holiday week. Transcript at 39. Based on the content and tone of the manager's statements to claimant on June 24, 2020, claimant believed that the employer was disappointed with claimant's repeated absences since the start of her employment and the effect they were having on coworkers who had to cover her shifts. During that conversation, the manager had stated that claimant was "letting [her] team down" by her continued absences from work. Transcript at 44-46. Claimant was upset that the manager made such statements while she was feeling stress from her father's medical situation.

(7) After June 24, 2020, claimant did not contact the store manager to update the manager about returning to work or to request additional time off because she "[had not] worked there very long," and for that reason, she did not believe the employer would grant such a request. Transcript at 18. On June 25, June 26, and June 30, 2020, the employer attempted to contact claimant by phone, but was unsuccessful because claimant did not answer the calls and the employer was not able to leave claimant a voicemail because the voice mailbox on her phone was full.

(8) On June 30, 2020, claimant did not return to work or contact the employer thereafter because she remained upset by the manager's June 24, 2020 comments to her and believed she needed to remain in close contact with her father to provide him with "moral support," and "help him with whatever things he wanted help with," which included monitoring the administration of his medications. Transcript at 26, 44-45. At that time, claimant's father was in the Eugene, Oregon hospital under the care of the medical professionals there.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

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).

At hearing, claimant testified that she quit work, but did not assert, and the record does not otherwise show, that she ever informed the store manager that she was quitting. Transcript at 12. The store manager told claimant that the employer could cover her shifts during the week of June 22, 2020, but needed to hear from her to know if it needed to assign other employees to work claimant's shifts the following week. Transcript at 38-39. Because claimant could have returned to work for the employer for her next scheduled shifts June 30, July 1 and July 2, 2020, but chose not to do so or contact anyone at the employer to request additional time off, the work separation was a voluntary leaving that occurred on June 30, 2020.

Voluntary Leaving. 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 PTSD, 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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e) as follows:

* * *

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off;

* * *

OAR 471-030-0038(1)(f) defines “a member of the individual’s immediate family,” as used in OAR 471-030-0038(1)(e)(B), above, to include “spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.”

Claimant quit work when she did in part because she remained upset by the manager’s June 24, 2020 comments to her. Although the content and tone of the manager’s statements to claimant on June 24, 2020 were upsetting to claimant, viewed objectively, they did not create a situation so grave that she had no reasonable alternative but to quit when she did. Although the manager may have criticized claimant as an employee for “letting [her] team down,” claimant did not assert or show that the manager insulted her personally, used foul language in his comments to her, or otherwise made statements that would justify a decision to quit. Accordingly, claimant failed to show that the manager’s comments to her created a situation so grave that no reasonable and prudent person with the characteristics and qualities of claimant’s impairment would have continued to work for the employer after such comments were made.

Claimant also quit work because she believed she needed to remain in close contact with her father to provide him with “moral support,” and “help . . . with whatever things he wanted help with,” which included monitoring the administration of his medications,” while he was hospitalized in Eugene. Although claimant understandably wanted to provide her father with “moral support” while he was hospitalized, the record does not show that claimant needed to quit work to monitor her father’s medications while he was hospitalized, or help him with “whatever things he wanted help with” while he was under the care of medical professionals in a hospital in claimant’s town. To the extent that

claimant quit because she believed she needed to be at the hospital to monitor her father's medications and help him with other things, viewed objectively, her situation was not grave. However, even assuming that claimant's circumstances with her father posed a grave situation, the record does not show that a claimant had no reasonable alternative but to quit when she did. Although claimant did not believe the employer would grant her additional time off of work, the record does not show that it would have been futile for claimant to pursue that alternative to quitting when she did. The manager had agreed the employer would cover her shifts the week of June 22, 2020 and indicated the employer's willingness to do so again during the week of June 30, 2020 if claimant contacted him "sooner than later." Viewing the employer's previous schedule accommodations objectively, claimant had the reasonable alternative of requesting additional shifts off from work or a reduced schedule while her father remained hospitalized in Eugene, where claimant resided. Accordingly, claimant failed to show that claimant's desire to remain in close contact with her father while he remained hospitalized created a circumstance so grave that no reasonable and prudent person with the characteristics and qualities of an individual with PTSD would have quit work without first pursuing the reasonable alternative of requesting additional time off work. Accordingly, claimant did not quit work with good cause under OAR 471-030-0038(4).

Claimant did not quit work when she did due to a compelling family reason under OAR 471-030-0038(5)(g) and (1)(e). Although a member of claimant's immediate family had an illness that necessitated care by another, claimant's father was receiving the care of medical professionals while hospitalized. The record does not show that claimant's father required claimant to care for him when she quit work. Moreover, claimant did not request additional time off to provide him with the "moral support," and "help . . . with whatever things he wanted help with," which included monitoring the administration of his medications. Claimant did not therefore show that the employer failed to accommodate her request for time off to care for her father. Accordingly, claimant failed to show that she quit work for a "compelling family reason" under OAR 471-030-0038(5)(g) and (1)(e).

Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective June 28, 2020, and until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-159957 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 17, 2021

NOTE: This decision affirms a denial of 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.

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.

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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.