

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0186

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 6, 2020 (decision # 113346). Claimant filed a timely request for hearing. On March 9, 2021, ALJ Frank conducted a hearing, and on March 11, 2021 issued Order No. 21-UI-162519, reversing decision # 113346 to conclude that claimant quit working for the employer for good cause and was not disqualified from receiving benefits based on the work separation. On March 15, 2021, the employer 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 her 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 claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Cascade School District # 5 employed claimant as a special education assistant from August 2019 until December 8, 2020.

(2) Claimant's young son was born with a congenital heart defect, and was therefore at high risk of complications from COVID-19. The doctor advised claimant to avoid the risk of infection, and subsequent spread to her son, as much as possible. For that reason, in April 2020, the doctor prohibited claimant from working on the employer's campus.

(3) Prior to March 13, 2020, claimant had worked in-person on the employer's campus. After that date, as a result of the COVID-19 pandemic, claimant began performing her work for the employer from home. Claimant continued to work from home until the end of the employer's school year in June 2020.

(4) When the new school year began in September 2020, remote work for the employer was no longer available to claimant. Because claimant was still concerned that she might contract the virus and spread it to her son if she worked in-person, claimant took a leave of absence rather than return to work at the beginning of the school year. While claimant was on leave, she was paid under the Families First Coronavirus Response Act (FFCRA). On November 23, 2020, claimant exhausted her FFCRA pay. From that date until December 8, 2020, claimant used her own accrued paid time off.

(5) In late November 2020, the employer notified claimant that all of her leave options would be exhausted as of December 8, 2020, and that claimant would thereafter be required to either return to in-person work or resign. On December 2, 2020, as a result of her continuing concerns about contracting COVID-19 at work and spreading it to her high-risk son, claimant resigned with an effective date of December 8, 2020. Claimant did not ask for a transfer to a different position prior to quitting.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes the following:

* * *

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;

* * *

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine;

(f) A person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus.

* * *

Claimant voluntarily quit work due to concerns that she would contract COVID-19 at work and subsequently pass it to her son, who was at high risk of complications due to a medical condition. Although claimant was advised by her son's doctor to stay home for that reason, the record does not show that claimant was specifically ordered to quarantine by her own health care provider in order to protect her own health; rather, claimant was ordered to stay home by her family member's provider in order to protect the health of the family member. Similarly, while claimant was required to stay home in order to avoid bringing COVID-19 home to her son, the record does not show that claimant specifically needed to stay home to care for her son, as claimant did not offer testimony that she lacked childcare or other caregiving services for her son. Therefore, subparagraphs (c), (e), and (f) of the OED Temporary COVID-19 Rule do not apply to this matter, and claimant did not quit for a "COVID-19 related situation" as defined by that rule.

Even if claimant did not quit for a "COVID-19 related situation," however, the record shows that claimant quit work with good cause. Claimant's concern that she might contract COVID-19 on campus and infect her high-risk young child was a grave reason for quitting, particularly in light of the fact that her child's physician advised her to do so. Further, the record does not show that claimant had any reasonable alternative but to quit. Claimant testified that, "other than vaccination," she was not aware of any other changes the employer could have made that would have permitted her to return to work on campus in Fall 2020. Audio Record at 11:36. The record does not show that a vaccine was available to claimant at the time she resigned. Claimant also testified that she did not seek a transfer to a different position prior to quitting. Audio Record at 19:52. However, the record contains no evidence either that the employer would have accommodated such a request had claimant sought it, or that any potentially-available transfers might have allowed claimant to work from home at the time. Finally, both parties testified that no further leave was available to claimant past December 8, 2020, and that she therefore would not have been permitted to take any additional time off from work. Audio Record at 16:00–16:15, 24:28–28:40. Because claimant faced a grave situation and reasonable alternatives to quitting were available to claimant, no reasonable and prudent person would have continued to work for the employer for an additional period of time.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 21-UI-162519 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 20, 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.

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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 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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