

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0226

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective July 5, 2020 (decision # 114913). Claimant filed a timely request for hearing. On March 1, 2021, ALJ S. Lee conducted a hearing, and on March 10, 2021 issued Order No. 21-UI-162440, affirming decision # 114913. On March 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Alco Investments LLC employed claimant from 1982 until July 8, 2020. Claimant's work for the employer varied over the 38 years he worked for the employer, but primarily involved maintaining buildings the employer owned.

(2) In 2011, claimant was diagnosed with depression. For a time, claimant saw a therapist and used medication to manage his depression. Beginning in 2016, claimant stopped taking this medication. In 2018, claimant's depression worsened. However, claimant did not have adequate health insurance coverage and did not return to see his therapist or restart medication after his depression worsened because he could not afford to do so.

(3) The employer employed another employee who acted as claimant's assistant. Claimant found that the assistant was "unwilling[] to do certain tasks," and if the assistant "thought it was . . . too hard or above his pay grade, he just refused to do the work." Transcript at 8, 9. This "caus[ed] [claimant] to work harder than [he] otherwise would have" and caused him to feel "burnt out" and "broken."

Transcript at 8. The assistant also did other things that bothered claimant, such as whistling at claimant and “belch[ing] in front of [claimant] constantly.” Transcript at 13. On several occasions, claimant expressed to the employer that he “had some problems” with the assistant, but the employer took no action to address the assistant’s conduct. Transcript at 16-17.

(4) In May or June 2020, claimant became ill and self-quarantined because he thought he may have been exposed to COVID-19. When claimant returned to work, the assistant “thought it was a joke” and laughed at claimant for wearing a mask. Transcript at 10. Claimant again raised the assistant’s behavior with the employer, but the employer took no action to address his complaint. During this time, claimant was “becoming more and more unhappy” and “would come home from work depressed and upset.” Transcript at 12.

(5) In late June or early July 2020, the employer informed claimant that they wanted to focus on construction work. Given that it would involve interaction with the public, claimant did not think that focusing on construction work “was such a great idea with the [corona]virus going around[.]” Transcript at 11. Shifting to construction work also concerned claimant because, in speaking with the assistant about the idea, claimant suspected that the assistant would not “work his butt off” like claimant would, which meant claimant “was going to be back in the same boat situation as always where [claimant] was putting 150 percent in and everybody else is maybe putting 60[.]” Transcript at 26.

(6) On July 8, 2020, claimant and the employer had another conversation and claimant told the employer that he preferred that they not change their focus to construction work. The employer explained that they intended to do “million dollar jobs” to “make enough money to cover” the salaries of claimant and the assistant. Transcript at 11. Learning the scope of the employer’s plan “took a toll on” claimant because claimant was 56-years-old, had “a worn out body,” and believed the employer wanted, in essence, to start a new construction company. Transcript at 11. “[I]t just zapped [claimant]” and “took the air right out of [him].” Transcript at 11. Claimant had a mental breakdown and immediately quit working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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 suffered from depression, 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.

The order under review acknowledged that claimant’s situation was grave but concluded that claimant did not establish good cause to quit because he failed to pursue reasonable alternatives. Order No. 21-UI-162440 at 4. However, the record does not support that conclusion.

As recognized by the order under review, claimant's mental breakdown presented him with a grave situation. Claimant had long-term depression, which had worsened in 2018 and which claimant had been unable to treat because he lacked adequate health insurance coverage. The record supports that the assistant exacerbated claimant's depression by refusing to do certain tasks and by engaging in behavior that bothered claimant, such as laughing at claimant for wearing a mask. The record also indicates that the employer's plan to focus on construction contributed to claimant's depression in that claimant believed it would be a major undertaking and that the assistant would not adequately support him. These factors culminated in a situation on July 8, 2020 in which claimant "felt like an 80-year-old man in a 56-year-old body," and believed his "body, [and] . . . mind [were] broken." Transcript at 8. On that day, when the employer discussed the scope of their plan to focus on construction work, claimant had a mental breakdown and quit. Given claimant's breakdown, the record is sufficient to establish that he faced a grave situation when he left work.

Claimant's situation was of such gravity that he had no reasonable alternative but to leave work when he did. The order under review concluded that claimant failed to pursue reasonable alternatives. Order No. 21-UI-162440 at 4. However, given claimant's state of mind at the time he quit, he had no reasonable alternatives to leaving work at that time. Claimant was unable to treat his depression because he could not afford to do so given that he lacked adequate health insurance coverage. He approached the employer about his issues with the assistant on several occasions but the employer took no action to address the assistant's behavior. Claimant informed the employer that he preferred the employer not change their focus to construction work, but there is no indication from the record that the employer would have declined to move forward with the construction work based on claimant's preference. Finally, although there is evidence that had claimant asked for a leave of absence rather than quit on July 8, 2020, the employer would have granted claimant time off work,¹ had claimant taken time off, he likely would still have had worsened and untreated depression, his issues with the assistant would have remained unaddressed, and the employer would still have moved forward with the focus on construction work. Thus, the weight of the evidence supports that taking time off work would have been futile, and therefore was not a reasonable alternative to quitting, because the factors that led to claimant's mental breakdown would have remained.

Claimant established that no reasonable and prudent person with the characteristics and qualities of an individual with depression would have continued to work for the employer for an additional period of time. Claimant therefore voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

DECISION: Order No. 21-UI-162440 is set aside, as outlined above.

S. Alba and D. P. Hettle;
Angela Steger-Bentz, not participating.

DATE of Service: May 5, 2021

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

¹ Transcript at 22-23

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 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 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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