

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0262

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 7, 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 February 16, 2021 (decision # 90935). Claimant filed a timely request for hearing. On March 15, 2021, ALJ Logan conducted a hearing, and on March 17, 2021 issued Order No. 21-UI-162820, affirming decision # 90935. On April 5, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Whole Foods Market employed claimant as a dishwasher from January 29, 2020 until February 21, 2020.

(2) Claimant suffered from "severe" major depression, post-traumatic stress disorder, borderline personality disorder, anxiety disorder, and a history of suicidal ideation. Exhibit 1 at 3. Claimant has not been successful in treating these conditions with medication and therapy, and per claimant's medical provider, the "best treatment" for these conditions "is to remove himself from known stressful situations that trigger his anxiety." Exhibit 1 at 3.

(3) On February 20, 2020, in response to learning that claimant had allegedly made a racist comment while at work, the assistant manager of claimant's department spoke to claimant about the allegation and instructed claimant not to make any such comments in the future. Claimant had not made the alleged comment.

(4) On February 21, 2020, claimant learned that the assistant team manager had spoken to him at the behest of the store's general manager. Claimant confronted the general manager, who told him that an employee had reported the alleged incident to her. Claimant subsequently became upset because he felt that the employer should have investigated the incident, and he believed that his reputation had become

“slandered” due to other employees’ knowledge of the comment he had allegedly made. Transcript at 36. These feelings aggravated claimant’s mental health conditions, triggered claimant’s recurrent nightmares, and caused him to become “physically sick” such that he was unable to work until May 2020. Transcript at 9, Exhibit 1 at 5. Claimant voluntarily quit work the same day as a result of these feelings and the effect they had on his health.

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 had major depression, post-traumatic stress disorder, borderline personality disorder, and anxiety disorder, permanent or long-term “physical or mental impairments” 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 voluntarily quit work due to the deterioration of his physical and mental condition following an unsubstantiated accusation that he had made a racist comment while at work. Such a situation may not constitute a grave reason for quitting for a person who does not suffer from the conditions that afflicted claimant. The order under review concluded that claimant quit without good cause because he had “not experienced any adverse effect from others believing he was a racist.” Order No. 21-UI-162820. The record does not support this conclusion.

The evidence in the record shows that the accusation, and the belief that his reputation amongst his coworkers had been damaged, had a sufficiently profound effect on claimant that he experienced several months of ill health, during which time he was unable to work. No reasonable and prudent person suffering from the multiple mental-health conditions which afflicted claimant would have continued to work for the employer in such a situation. Further, the record shows that, per claimant’s medical provider, claimant’s health is best served when he “removes himself from known stressful situations that trigger his anxiety.” The record does not show that any therapeutic options, which might have otherwise helped claimant cope with the anxiety, would have actually been effective, or that any alternatives were available to claimant that would have allowed him to work without experiencing the anxiety and attendant issues that resulted from the accusation against him. Therefore, claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit.

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

DECISION: Order No. 21-UI-162820 is set aside, as outlined above.

S. Alba and D. Hettle;

Angela Steger-Bentz, not participating.

DATE of Service: May 12, 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 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.

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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 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 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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