

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0270

Reversed & Remanded

PROCEDURAL HISTORY: On February 11, 2021, 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 December 20, 2020 (decision # 110559). Claimant filed a timely request for hearing. On March 30, 2021, ALJ Snyder conducted a hearing at which the employer failed to appear, and on April 1, 2021 issued Order No. 21-UI-163941, concluding that claimant voluntarily left work with good cause and was not disqualified from receiving benefits. On April 8, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Riverside Carpentry LLC employed claimant as a carpenter from October 2019 until December 23, 2020.

(2) Claimant lived with his parents in Portland, Oregon at all times relevant herein.

(3) Claimant's mother had "myofascia." Audio Record at 9:02. She was not able to work due to her condition.

(4) On December 9, 2020, claimant gave the employer notice that he would quit work on December 23, 2020 to move from Portland to Florida with his parents "because of his mother's health." Audio Record at 9:31. Claimant did not have a place to live in Portland other than with his parents. On December 23, 2020, claimant quit work as planned.

(5) From December 23, 2020 until January 5, 2021, when claimant and his parents left to drive to Florida, claimant helped his father pack his parents' belongings from their house and load them into a U-Haul. Claimant was the only person in his family capable of assisting his parents with packing and loading their belongings.

CONCLUSIONS AND REASONS: Order No. 21-UI-163941 is set aside, and this matter remanded for further development of the record.

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). 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.

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[.]

* * *

In relevant part, 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 parents.

Order No. 21-UI-163941 concluded that claimant had good cause to quit work when he did because he would not have anywhere to live if he did not move with his parents to Florida. Order No. 21-UI-163941 at 2. The order reasoned that the potential loss of housing posed a grave situation for claimant, and that he had no reasonable alternatives to leaving work in Portland because he had no one to live with in Portland, and could not afford his own housing. Order No. 21-UI-163941 at 2. However, the record is not sufficiently developed to support that conclusion.

The record does not contain sufficient information to determine if claimant left work due to a compelling family reason as defined under OAR 471-030-0038(1)(e)(B), or if claimant quit work for good cause under OAR 471-030-0038(4) because he faced a grave situation due to his circumstances and had no reasonable alternative but to leave work when he did. The record shows, generally, that claimant’s mother had a disabling medical condition, and that claimant left work to move with his parents to Florida “because of his mother’s health.” Claimant’s parent is “a member of the [claimant’s] immediate family,” as defined by OAR 471-030-0038(1)(f). However, the record is not sufficiently developed to determine if, due to her illness or disability, claimant’s mother “necessitate[d] care” by claimant. The record does not show what activities claimant’s mother was unable to do and whether the mother needed claimant to assist with those activities. The record does not show whether claimant’s father, who also lived with claimant’s mother, was capable of caring for claimant’s mother without claimant’s assistance. Nor does the record show whether claimant’s mother needed care on a temporary or permanent basis, or whether claimant requested time off to assist his mother.

To the extent claimant left work because he did not have housing other than with his parents, the record is not sufficiently developed to determine if claimant had good cause to quit when he did. The record does not show what options claimant considered or pursued for housing near his employment, and whether those options were reasonable. The record does not show what income claimant had and if he was able to afford housing in the Portland area.

Finally, the record does not contain sufficient inquiry into whether claimant left work due to reasons other than being without housing and the need to care for his mother. The record does not show if claimant had other reasons that he wanted to continue living with his parents, such as religious or cultural reasons.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to quit work when he did, Order No. 21-UI-163941 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-163941 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 14, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-163941 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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.

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