

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0298

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 90909). The employer filed a timely request for hearing. On March 30, 2021, ALJ Murdock conducted a hearing, and on April 6, 2021 issued Order No. 21-UI-164265, reversing decision # 90909 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective September 29, 2019. On April 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of information contained in claimant's written argument regarding the amount of time that claimant needed to care for her mother, which is necessary to complete the record. This information has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) The US Postal Service employed claimant as a full-time mail carrier at its Aumsville, Oregon branch from November 22, 2003 until October 11, 2019.

(2) During August and September 2019, claimant missed several weeks of work due to an injury.

(3) Sometime before October 7, 2019, claimant's mother, who lived in Vernonia, Oregon, was diagnosed with skin and throat cancer. The illness necessitated major surgery and multiple hospitalizations. Thereafter, claimant determined that she would need to relocate to Vernonia to help care for her mother while she was in treatment.

(4) On October 7, 2019, claimant sent a text message to the employer informing them that she intended to quit in two weeks' time. On October 8, 2019, claimant informed the employer that she wished her final day to be October 11, 2019. Exhibit 1 at 2. Claimant did not return to work after October 7, 2019. At the time that claimant quit, she did not know how long her mother would require her care.

(5) Prior to quitting, claimant called other post offices in the Vernonia area in an attempt to transfer to a different branch, but was unsuccessful. The employer maintained an online system by which employees could seek transfers. Claimant was unaware of the existence of this system and was unskilled in computer use, and therefore did not seek a transfer in that manner.

(6) Prior to quitting, claimant did not seek a leave of absence under the Family and Medical Leave Act (FMLA), as she was not aware of its existence. Had claimant sought FMLA leave, she might have been eligible for about 248 hours of FMLA leave. Audio Record at 19:58.

(7) Claimant ultimately cared for her mother for six months until her mother recovered sufficiently from her illness so that claimant no longer needed to care for her. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant 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). 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)(B) to include situations in which "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."

The order under review concluded that claimant quit work without good cause because "she did not request a leave of absence" prior to quitting, which "would have preserved her position with the employer for an additional period of time and would have afforded her time to be able to reassess her mother's situation later," during which time she might also have been able to secure a transfer. Order No. 21-UI-164265 at 2-3. Although the record supports a conclusion that claimant did not quit for good cause under OAR 471-030-0038(5)(g), however, it does not support the conclusion that she did not quit for good cause under OAR 471-030-0038(4).

Claimant quit work in order to care for her ailing mother. Because she did not request time off prior to quitting, she did not quit due to a "compelling family reason" under OAR 471-030-0038(1)(e)(B). The work separation therefore must be considered under OAR 471-030-0038(4). Because claimant's mother

was afflicted with a serious and life-threatening illness, and claimant was required to move in order to care for her, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have quit work if they had no reasonable alternative.

At the time that she quit, claimant did not know how long she would be required to care for her mother. However, it is reasonable to infer that claimant understood she would need to care for her mother for an extended period of time given the severity of her mother's condition, and that six months of caregiving ultimately was necessary. Claimant might have been eligible for about six weeks of FMLA leave, but it is reasonable to infer that she had little or no paid leave available, since she recently had been absent for several weeks due to her own medical issues. Therefore, had claimant sought and been granted a leave of absence to care for her mother, it likely would have been unpaid and for an indefinite, extended period of time. The Court of Appeals has held that an unpaid leave of absence for an indefinite, extended period of time is not a reasonable alternative to quitting work.¹ Requesting a leave of absence therefore was not a reasonable alternative to quitting for claimant.

Other than seeking a leave of absence, the only other potential alternative to quitting evident from the record was a transfer to a branch closer to claimant's mother's residence in Vernonia. The record shows that claimant sought in securing such a transfer, but was unsuccessful. Although claimant did not use the employer's online system to seek a transfer, the record does not show that using the online system would have been more successful than claimant's method of requesting a transfer, or that a position was even available in Vernonia, and that seeking a transfer was anything but futile. Therefore, based on this record, claimant 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-164265 is set aside, as outlined above.

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

DATE of Service: May 19, 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.

¹ See *Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension).

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.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.

