

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0303

Reversed & Remanded

PROCEDURAL HISTORY: On January 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for without good cause and was disqualified from receiving unemployment insurance benefits effective November 15, 2020 (decision # 91044). Claimant filed a timely request for hearing. On April 13, 2021, ALJ Murdock conducted a hearing, and on April 15, 2021 issued Order No. 21-UI-164944, affirming decision # 91044. On April 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her 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 her 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).

The parties may offer new information, such as information claimant included in her written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Nyssa Public School District #26 employed claimant as an administrative assistant from July 2015 until November 20, 2020.

(2) Claimant was a care provider for her elderly mother, who lived with claimant. Claimant was also raising her nine-year-old grandchild, who also lived with claimant.

(3) Claimant had four adult daughters. Claimant's oldest daughter was the mother of the grandchild claimant was raising, and did not help claimant care for her mother or grandchild. Claimant's three other daughters had helped claimant care for her mother and grandchild. However, by 2020, two of these daughters had moved away to attend college. In late summer 2020, claimant's youngest daughter also moved away to attend college. Claimant's youngest daughter was the last remaining daughter who had helped claimant care for her mother and grandchild.

(4) In September 2020, claimant's grandchild began the fall semester of elementary school, which took place remotely via the internet due to the COVID-19 pandemic. The grandchild's online school instruction required assistance from claimant. Claimant arranged to work part time for the employer to accommodate assisting her grandchild with school. The employer also allowed claimant to bring her grandchild to work when needed. On those days, the grandchild would "do [online school] in the back office" while claimant worked, which "was just crazy, but [claimant] did it." Audio Record at 10:57.

(5) In October 2020, claimant obtained temporary custody of her two other grandchildren. One of claimant's two other grandchildren also required assistance from claimant with online school, which the employer accommodated.

(6) Claimant felt overwhelmed by her responsibilities at work and to her family. Previously, she had "never had to deal with all of it all by [her]self: caring for [her] mom, and going to work, and doing online, and doing everything by [her]self." Audio Record at 14:13. When claimant's youngest daughter moved away, "it became overwhelming" for claimant. Audio Record at 14:23. Claimant decided to quit working for the employer so she could move near her daughters for support.

(7) Claimant gave the employer two weeks' notice of her intent to quit and voluntarily left work on November 20, 2020. Thereafter, claimant, her mother, and the grandchild she was raising moved in with one of claimant's daughters in North Carolina. When claimant moved, claimant's two other grandchildren were returned to the custody of claimant's oldest daughter.

(8) Prior to leaving work, claimant had not asked for a leave of absence or requested to work reduced hours. Claimant did not believe she would be allowed to work fewer hours than half a day because at the time she quit, claimant "the only person in the office" because her "coworker was also out due to an injury." Audio Record at 18:51.

CONCLUSIONS AND REASONS: Order No. 21-UI-164944 is reversed and the 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.

The order under review concluded that claimant quit work without good cause. The order reasoned that although “claimant certainly faced a difficult situation, she did not establish that she faced a grave situation or that she had no reasonable alternative but to quit work[.]” Order No. 21-UI-164944 at 2-3. The record as developed does not support that conclusion.

Claimant quit work because her responsibilities at work and to her family “became overwhelming” after her youngest daughter moved away. However, the record was not sufficiently developed to determine whether claimant’s sense of being overwhelmed placed her in a grave situation. On remand, the record must be developed to specifically show how claimant was overwhelmed and how being overwhelmed may have emotionally, physically or otherwise affected claimant. To this end, the ALJ should inquire as to what tasks claimant was responsible for in order to care for her mother and the three grandchildren in her care, and how those responsibilities interacted with her duties at work. The ALJ should ask questions to assess how being required to assist two of her grandchildren with online school impacted claimant. The record should also be developed as to how losing the support of claimant’s youngest daughter in late summer 2020 affected claimant’s ability to provide care and how gaining the support of one of her daughters after claimant quit work and moved to North Carolina may have improved claimant’s situation.

Additionally, the order under review based its conclusion that claimant had not established good cause to quit, in part, because claimant did not request a leave of absence or a greater reduction in work hours prior to quitting, which the order deemed were reasonable alternatives to quitting. Order No. 21-UI-164944 at 3. The record as developed is insufficient to determine whether seeking a leave of absence or a greater reduction in work hours were reasonable alternatives to leaving work. On remand, the record should be developed to show whether a leave of absence or a greater reduction in work hours would have been available to claimant, especially in light of evidence that claimant’s coworker was out due to an injury. The record should also be developed to determine whether these alternatives, even if available, would have been futile in any event because the circumstances that led to claimant’s quit would have persisted following the end of the leave period, or notwithstanding a greater reduction in hours.

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 quit work with good cause, Order No. 21-UI-164944 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-164944 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 26, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164944 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 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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