

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0357

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 20, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant because of a COVID-19 related situation, which did not disqualifying claimant from receiving unemployment insurance benefits (decision # 143229). The employer filed a timely request for hearing. On April 21, 2021, ALJ Micheletti conducted a hearing, and on April 29, 2021 issued Order No. 21-UI-165802, reversing decision # 143229 by concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective December 27, 2020. On May 4, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Park Forest Care Center employed claimant from September 1, 2020 until December 31, 2020. Claimant worked as a charge nurse at the employer's long-term care skilled nursing facility.

(2) On October 30, 2020, claimant tested positive for COVID-19. Claimant experienced mild symptoms and the employer granted her a medical leave to recover. On November 11, 2020, claimant returned to work at reduced hours. When claimant returned to work, she had lingering symptoms including fatigue and difficulty concentrating.

(3) On November 24, 2020, the employer informed claimant that she would be working in the facility's COVID unit going forward. Claimant disliked that the employer assigned her to the COVID unit because she was concerned about whether she could provide the level of care patients in the COVID unit required due to her lingering symptoms. However, claimant did not tell the employer that she did not

want to be placed in the COVID unit. If claimant had expressed to the employer that she preferred not to work in the COVID unit, the employer would not have required claimant to work in the COVID unit.

(4) On November 25, 2020, claimant tendered notice of her intent to quit working for the employer with her last day effective December 31, 2020. Claimant decided to quit working for the employer because she was concerned about whether she could provide the level of care patients in the COVID unit required due to her lingering symptoms.

(5) Claimant did not request a further reduction in hours or an additional leave of absence prior to tendering her resignation notice. Had claimant made such a request, the employer would have attempted to accommodate claimant's request.

(6) In mid-December 2020, claimant asked an individual within the employer's human resources (HR) department if she could continue working for the employer after her December 31, 2020 resignation date. The employer declined claimant's request and informed claimant that they would honor her previously tendered resignation notice.

(7) Also in mid-December 2020, claimant's physician restricted her from working for two weeks due to her lingering COVID-19 symptoms. The employer accommodated claimant's work restrictions and allowed her to take time off work during the final two weeks of her notice period.

(8) On December 31, 2020, claimant voluntarily left work as planned.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

When claimant tendered notice of her intent to quit effective December 31, 2020, claimant demonstrated that she was unwilling to continue to work for the employer for an additional period of time. Although claimant later tried unsuccessfully to rescind her resignation, at the point she tendered her resignation notice, continuing work was available but she was unwilling to continue working. Therefore, claimant's work separation was a voluntary leaving.

Voluntary Leaving. 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.

At hearing, claimant explained that the employer's decision to assign her to the COVID unit was the "tipping point" for her decision to leave work. Transcript at 14. The unit was demanding and claimant was concerned about "handling the stress of everything" and "fe[lt] annoyed that [she] wasn't up to par." Transcript at 17.

Given her own lingering COVID-19 symptoms, claimant had reasonable concerns that she could not provide the level of care patients in the COVID unit required and that the stress of working in the unit might exacerbate her symptoms. However, reasonable alternatives to quitting were available to claimant that she did not pursue.

First, when the employer announced that claimant was being assigned to the COVID unit, claimant did not tell the employer that she did not want to be placed in the COVID unit. The record shows that if claimant had expressed to the employer that she preferred not to work in the COVID unit, the employer would not have required her to work in that unit. Second, the preponderance of the evidence shows that the employer would have accommodated claimant with a further reduction in hours or an additional leave of absence had she asked for one prior to tendering her resignation notice. Such accommodations may have enabled claimant to work in the COVID unit without concern of exacerbating her own symptoms. Given that the employer accommodated the work restrictions ordered by claimant's physician and allowed her to take time off work during the final two weeks of her notice period, it is more likely than not that the employer would have granted claimant a reduction in hours or an additional leave of absence had they been requested. Therefore, the record shows that those alternatives would not have been futile and were reasonable alternatives to quitting when claimant did.

Claimant's reason for quitting therefore was not of such gravity that she had no reasonable alternative but to leave work when she did. Claimant therefore quit work without good cause and is disqualified from receiving benefits effective December 27, 2020.

DECISION: Order No. 21-UI-165802 is affirmed.

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

DATE of Service: June 10, 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 denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits

program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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

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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