

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0471

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 30, 2021, 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 based on the work separation (decision # 141632). The employer filed a timely request for hearing. On June 1, 2021, ALJ Mott conducted a hearing, and on June 3, 2021 issued Order No. 21-UI-167972, reversing decision # 141632 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 8, 2020. On June 14, 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 her 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. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Willamette Valley Medical Center employed claimant as a respiratory therapist from March 25, 2020 until November 10, 2020.

(2) During her course of employment, claimant became pregnant, with an expected due date of April 30, 2021.

(3) In September 2020, due to conditions related to her pregnancy, claimant's doctor placed restrictions on her work, indicating that claimant must be able to take her work breaks, must have water available to her at her workstation, and should not lift more than 10 pounds. The employer was not able to accommodate these restrictions. As a result, on September 25, 2020, claimant began a medical leave of absence under the Oregon Family Leave Act (OFLA). Claimant received short-term disability payments while she was on leave.

(4) In early November 2020, claimant sought to return to work. Claimant's doctor was hesitant, but agreed to release her to work so long as the employer could accommodate claimant's medical restrictions. Claimant subsequently spoke to her manager about returning to work with accommodations, but he told her that he was not sure if he could accommodate her restrictions.

(5) On November 10, 2020, claimant sent the employer an e-mail stating that she was resigning. In the e-mail, claimant also asked the employer if she could remain employed on a "per diem" (on-call/as-needed) basis, as she believed that she would be able to be accommodated if she worked in such an arrangement. Audio Record at 7:50. The employer did not have any per diem positions available at the time.

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

Nature of the 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).

In her written argument, claimant stated that she "didn't want to get fired" and "tried to obtain another position." Claimant's Written Argument at 1. While the record does show that claimant made an attempt to remain employed by seeking an alternate work arrangement, it also is clear that she was only willing to continue working for the employer on a per diem basis, and that the employer did not have any per diem positions available at the time. Because claimant could have continue working for the employer for an additional period of time in her current position, the work separation is a voluntary leaving that occurred on November 10, 2020.

Voluntary Quit. 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.

Claimant voluntarily quit work because the employer was unable to accommodate her physician-ordered medical restrictions. While not being able to perform her work duties due to medical restrictions was a grave situation, claimant did not show, by a preponderance of the evidence, that she had no reasonable alternative but to leave work. At hearing, the employer's witness was unable to confirm whether claimant would have been eligible for an extension of her leave of absence. However, the record shows that claimant's leave was authorized under OFLA, and that she began the leave on September 25, 2020. Because OFLA entitles eligible workers to up to twelve weeks of medical leave,¹ claimant may have

¹ See ORS 657A.150 – 657A.186; OAR 839-009-0200 – 839-009-0320.

been able to continue her leave of absence through the middle of December 2020 so long as her physician still required claimant to observe the same work restrictions. As claimant's physician was hesitant to allow her to return to work in November 2020, the record suggests that, more likely than not, claimant's physician would have agreed to keep claimant off of work for the remainder of the twelve weeks, or until claimant had recovered sufficiently to work without restrictions. Therefore, the preponderance of the evidence shows that, more likely than not, claimant could have continued her leave of absence rather than quitting.

Further, remaining on medical leave was a reasonable alternative to quitting because claimant was being paid short-term disability benefits and likely still being provided with medical benefits² during that time. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000) (where claimant continued to accrue bonus pay and medical benefits while on a medical leave of absence, remaining on leave was a reasonable alternative to quitting). *Cf. 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). Additionally, remaining on medical leave would have allowed claimant to wait for her condition to resolve sufficiently that she could have worked without restrictions, or for a per diem position to become available. Because claimant had the reasonable alternative of remaining on medical leave through at least December 2020, she failed to show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving benefits effective November 8, 2020.

DECISION: Order No. 21-UI-167972 is affirmed.

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

DATE of Service: July 20, 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.

² *See* ORS 659A.171(2), (5)(b)

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.surveymoz.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 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 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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