

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0475

*Late Request for Hearing Allowed
Reversed & Remanded*

PROCEDURAL HISTORY: On December 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective July 12, 2020 (decision # 140246). On January 11, 2021, decision # 140246 became final without claimant having filed a request for hearing. On April 5, 2021, claimant filed a late request for hearing on decision # 140246. On May 13, 2021, ALJ McGorrin conducted a hearing, and on May 20, 2021 issued Order No. 21-UI-167187, concluding that claimant had good cause to file the late request for hearing, and reversing decision # 140246 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On June 9, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to file a late request for hearing is **adopted**. The remainder of this decision addresses whether claimant voluntarily quit work with good cause.

FINDINGS OF FACT: (1) Avamere at Seaside employed claimant, most recently as a medication technician at the employer's memory care facility, from October 2018 until July 17, 2020.

(2) At the time that claimant separated from the employer, she lived with her two-year-old son and her boyfriend in an apartment in Seaside, Oregon. While claimant was at work, she paid a babysitter to watch her son. Claimant's boyfriend worked for a commercial fishery and was not generally available for childcare, and claimant had no family nearby who could watch her son while she was at work.

(3) On July 16, 2020 or July 17, 2020, the employer notified their employees that a person in the facility had tested positive for COVID-19, and that they “all were going to get tested.” Transcript at 36. When claimant’s babysitter found out about claimant’s possible exposure to COVID-19, she informed claimant that she could no longer watch claimant’s son.

(4) On July 17, 2020, claimant worked her last shift for her employer. On the same day, claimant submitted a letter of resignation to the employer in which she indicated that she was quitting effective immediately because she had become concerned about the possibility of contracting COVID-19 at work. The babysitter last watched claimant’s son on July 17, 2020.

(5) Prior to learning about the positive COVID-19 test at the employer’s facility, claimant had already been intending to quit work in the near future and move in with her family in Washington. Claimant stated in her resignation letter to the employer, “My anticipation was to stay until later next week when Robert has to be at his new job where we are moving.” Transcript at 40.

CONCLUSIONS AND REASONS: Order No. 21-UI-167187 is reversed, and this matter remanded for further development of the record.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes, in relevant part, that a person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus. OAR 471-030-0070(1)(f).

The order under review concluded that claimant quit work with good cause because she “left work to care for her two-year old son when her child care provider quit” and “therefore had good cause to leave work under the March 8, 2020 COVID-19 rules.” Order No. 21-UI-167187 at 5. The record as developed does not support this conclusion.

At hearing, claimant testified that she quit because her “private in home babysitter no longer wanted to babysit [her] son, knowing that there was a COVID case” at the employer’s facility. Transcript at 34. This testimony contrasts with the reason for quitting that claimant reported on her resignation letter of July 17, 2020, in which she stated that she had intended on staying until the following week when she intended to move, and she did not “feel comfortable working [at the employer’s facility] knowing that a confirmed COVID case has been in the building” and that she felt that she did not “have enough

will/courage to work in the medical field now that it's all become 'real.'" Exhibit 3 at 1. Claimant made no mention of childcare concerns in the letter. Claimant attempted to resolve this inconsistency by testifying at hearing that she "should have been more specific in [her] letter" and that she regretted that she had not been. Transcript at 34. This explanation notwithstanding, the record as developed does not show whether claimant learned that she had lost her childcare before she quit, or after she quit. As such, it is not clear whether the event which actually caused claimant to quit at the time that she did was her fear that she would contract COVID-19 at work, or that she lost her childcare. On remand, the record should be developed to determine when claimant learned that she had lost her childcare in relation to when she submitted her letter of resignation, which event ultimately led her to quit, and whether and for how long claimant would have continued working for the employer if she had not lost her childcare.

If the record on remand shows that claimant quit due to her fear that she might contract COVID-19 at work, inquiry should be made to determine whether that constituted good cause for quitting work, including whether the employer followed established safety guidelines, whether the employer supplied appropriate personal protective equipment to claimant, whether claimant or anyone she lived with were immunocompromised or otherwise at heightened risk of complications from contracting COVID-19, and whether any reasonable alternatives to quitting, such as a reassignment of duties to a job with lower potential for exposure, were available to claimant.

If the record on remand shows that claimant quit due to her loss of childcare, inquiry should be made to determine whether claimant quit for a "COVID-19 related situation" under OAR 471-030-0070(1). In particular, the record as developed does not definitively show that claimant's loss of childcare caused her to "stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus" per OAR 470-030-0070(1)(f). At hearing, claimant testified that after she informed her babysitter about the positive COVID-19 case at the employer's facility, the babysitter told her that,

I'm so sorry, but I don't think that you should come around the house because you've been exposed to COVID," and then it followed with, "I'm really sorry. I'm embarrassed to say this, but I don't think that I can watch your son anymore. I'm not trying to be directly exposed to COVID. I have my own health issues.

Transcript at 36. From this statement, it appears that the babysitter watched claimant's son in the babysitter's own home, which can be reasonably construed as a "child care provider or similar facility." However, it is not clear from the record whether the babysitter closed the facility entirely, or whether she merely banned claimant and her son from her services. On remand, inquiry should be made to clarify the nature of the services that the babysitter offered, and to determine whether the babysitter continued offering services entirely after she stopped watching claimant's son, and in any case whether the loss of childcare constituted a "COVID-19 related situation."

Additionally, it is not clear from the record whether the babysitter continued to watch claimant's son in any capacity after she learned that claimant might have been exposed to COVID-19, or whether she watched claimant's son for at least one more shift after learning about claimant's possible exposure. The record on remand should be developed to clarify this matter. If the babysitter did watch claimant's child for at least one additional shift after learning about claimant's potential exposure, the ALJ should inquire

as to whether claimant asked the babysitter if she would have been willing to watch her child for any additional shifts while claimant found replacement childcare or until claimant moved.

If the record on remand does not show that claimant's loss of childcare constituted a "COVID-19 related situation," the record should be developed to determine whether the loss of childcare constituted a situation of such gravity that claimant had no reasonable alternative but to quit. Inquiry should therefore be made as to whether any alternate childcare options were available to claimant as of July 17, 2020, including daycare facilities, out-of-town relatives who may have been available to stay with claimant, arrangements with coworkers, or any other efforts claimant could have made to find alternate childcare, as well as whether claimant would have been eligible for a leave of absence while she attempted to secure childcare. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

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 voluntarily quit work with good cause, Order No. 21-UI-167187 is reversed, and this matter is remanded.

DECISION: Claimant's late request for hearing is allowed. Order No. 21-UI-167187 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 15, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-167187 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

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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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