

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0500

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective August 9, 2020 (decision # 81653). Claimant filed a timely request for hearing. On June 9, 2021, ALJ C. Smith conducted a hearing, and on June 17, 2021 issued Order No. 21-UI-168933, affirming decision # 81653. On June 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Alternative Services Oregon Inc. employed claimant full time as an assistant home manager from June 19, 2017 until August 9, 2020.

(2) Beginning in early August 2020, claimant's mother suffered from a series of strokes that required hospitalization. Claimant had reason to believe that her mother would recover but would need 24-hour care when she was released from the hospital. Claimant had siblings who could provide some support with the care of their mother, but claimant was the only person who could provide the bulk of their mother's care.

(3) Because claimant understood that she would be required to provide care to her mother, she spoke to her supervisor and requested to either work part time in her role as assistant home manager, or else to step down from that role so that she could work part time for the employer in some other role. Claimant's supervisor told her that the employer could not fulfill her request to move to part-time work. Claimant did not take her request to anyone in a position of authority over her own supervisor, such as her supervisor's manager or the human resources department. Claimant was unaware that she could speak to the employer's human resources department about such matters, and "always" went to her own supervisor to discuss such matters, who "basically relayed messages" from upper management back to claimant and her coworkers. Claimant therefore "just assumed" that the denial of her request came directly from upper management. Transcript at 34-35.

(4) On August 3, 2020, claimant worked her last shift for the employer. Thereafter, claimant was absent from work. Claimant did not have any paid time off (PTO) available at the time, and the absences were therefore unpaid.

(5) On August 7, 2020, after having learned about claimant's mother, the employer mailed paperwork to claimant indicating that she could be eligible for Family Medical Leave Act (FMLA) leave based on claimant's need to care for her mother. Claimant could have been eligible for up to twelve weeks of unpaid FMLA leave, had she completed the paperwork and submitted it to the employer.

(6) On August 9, 2020, claimant voluntarily quit working for the employer so that she could provide care for her mother. As of June 9, 2021, claimant's mother still required full-time care.

CONCLUSIONS AND REASONS: Claimant voluntarily 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.

Claimant quit work in order to care for her mother after a series of strokes left her mother unable to care for herself. That claimant's mother required 24-hour care, and that claimant was primarily responsible for that care, was a grave reason for quitting. The order under review concluded that claimant voluntarily quit work without good cause because she failed to seek the reasonable alternatives of either taking FMLA leave or contacting someone higher in the employer's hierarchy to request a change of her work schedule. Order No. 21-UI-168933 at 3. The record does not support that conclusion.

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. *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). The record does not show that claimant's mother had a prognosis of a quick recovery. Because claimant also had no PTO available to her, any leave of absence she might have taken instead of quitting would have been both protracted and unpaid, and therefore would not have been a reasonable alternative to quitting.

Additionally, while the employer's human resources assistant testified at hearing that the employer might have been able to accommodate claimant's request for a schedule change had claimant taken the request higher than her own supervisor, the record shows that a reasonable and prudent person in claimant's situation would have concluded that doing so would have been futile. Transcript at 32. At

hearing, claimant testified that she “continuously had conversations with [her supervisor]” to let the supervisor know what had been happening with claimant’s mother, but that the supervisor told claimant that she could neither work part time in her role as assistant house manager nor step down to a different position and work part time in that role. Transcript at 18. Claimant also testified that her supervisor was her primary contact regarding employment issues, and that the supervisor generally relayed information from upper management to staff. The record does not indicate that claimant had reason to believe that her supervisor would give her inaccurate information on the matter.

Under the circumstances, a reasonable and prudent person would conclude that their own supervisor would have confirmed with upper management regarding the matter before telling them that the requested schedule change was impossible, particularly given the gravity of the situation and the multiple discussions that had taken place regarding the matter. Therefore, even if the employer would have been able to accommodate claimant’s request for a schedule change, a reasonable and prudent person would have concluded that going above their supervisor’s head in order to make such a request would have been futile, and would not have pursued it further. As a result, claimant had no reasonable alternative but to quit work.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-168933 is set aside, as outlined above.

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

DATE of Service: July 27, 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 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.

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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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