

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0510

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 4, 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 September 20, 2020 (decision # 82852). Claimant filed a timely request for hearing. On June 8, 2021, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on June 16, 2021 issued Order No. 21-UI-168865, affirming decision # 82852. On June 23, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring 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).

FINDINGS OF FACT: (1) Corner Club employed claimant as a bartender from November 2019 until September 20, 2020.

(2) In 2007, claimant was diagnosed with Graves' disease, an autoimmune disorder which affects her thyroid. Claimant managed the condition with medication that treats hyperthyroidism.

(3) At the time claimant worked for the employer, claimant was in her early 50's and lived with her husband and her two adult sons. Claimant's mother, who was 78 at the time and suffered from lupus and dementia, and had a weakened immune system, lived with claimant's sister in a different city. Transcript at 10. Claimant occasionally stayed with her mother while claimant's sister traveled for work.

(4) As of May 2020, claimant was working for the employer three to four days per week, earning minimum wage plus tips. In July 2020, as a result of a coworker returning from medical leave, the employer cut claimant's hours to one five-to-six hour shift on Saturdays, plus other occasional shifts as needed.

(5) Over the course of the summer of 2020, claimant became increasingly uncomfortable with the risk of contracting COVID-19 at work because of the actions of patrons whom she believed were not taking safety seriously enough. On September 20, 2020, claimant witnessed patrons coughing and sneezing on and around the poker machines, and discovered that someone had vomited in the bathroom. As a result of the distress that claimant experienced following that shift, she determined that the risk of contracting COVID-19 at work was not worth continuing to work for the employer for one day a week, and voluntarily quit work the same day. If the employer had not cut back claimant's hours, claimant would have continued to work for the employer despite the risk of COVID-19 exposure at work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without 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). Claimant had Graves' disease, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time. A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant voluntarily quit work because, after working an unpleasant shift she characterized as a "hell day," claimant determined that she was no longer willing to bear the risk of contracting COVID-19 at work while the employer only regularly scheduled her for one shift per week. Transcript at 29. At hearing, claimant testified that despite her safety concerns, she "would have stuck it out" and continued to work for the employer if they had given her more hours, as they had done prior to July 2020. Transcript at 29. Claimant also testified that she "just . . . think[s] it was the one day a week thing" that led her to quit. Transcript at 29. From this testimony, the record shows that the reduction in claimant's hours was the primary reason that she quit. Claimant did not offer evidence to show either that she earned less from working than it cost her to work, or that continuing to work for the employer substantially interfered with her ability to return to full-time work. Therefore, to the extent that claimant voluntarily quit due to the reduction in hours, she quit without good cause.

The record also suggests that claimant might have been willing to continue working for the employer, even with reduced hours, if not for her concern about contracting COVID-19 at work. To the extent that claimant voluntarily quit work because of such concerns, she did not demonstrate that she faced a situation of such gravity that she had no reasonable alternative but to leave work. At hearing, the ALJ read into the record a portion of a written statement¹ that claimant had enclosed with her request for

¹ Because the written statement itself was not offered or admitted into the hearing record as evidence, the contents of that statement, other than the portions read into the record at hearing, have not been considered when reaching this decision.

hearing, in which claimant stated that she had a “compromised immune system.” Transcript at 9. While the record shows that claimant suffered from Graves’ disease, which is an autoimmune disorder, claimant did not offer any otherwise evidence to show that she was at heightened risk of complications from a COVID-19 infection compared to the general population. For example, while claimant testified that she treated the disorder with a medication used to “slow down [her] hyperthyroidism,” she did not indicate that she took any medications which suppressed her immune system, or that a healthcare provider or public health official had advised her to self-quarantine.²

Claimant also did not offer evidence that she lived with anyone who was at heightened risk of complications from COVID-19 infection; and while claimant’s mother was immunocompromised, her mother lived with claimant’s sister in a different city, and claimant did not show that she was the only person who could stay with her mother while her sister was away on business travel. Finally, although claimant’s discomfort with the conditions at work on September 20, 2020—such as patrons coughing and vomiting—is understandable, claimant did not show that her working conditions that day were materially worse than those she experienced earlier in the pandemic. Therefore, claimant has not shown by a preponderance of the evidence that no reasonable and prudent person with a diagnosis of Graves’ disease would have continued working 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 September 20, 2020.

DECISION: Order No. 21-UI-168865 is affirmed.

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

DATE of Service: July 28, 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 During a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes, in relevant part, that a person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus. The record does not show that claimant’s circumstances qualified as a “COVID-19 related situation” under this or any other portion of the OED Temporary COVID-19 Rule.

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.surveymzmo.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 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 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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