

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0522

Reversed & Remanded

PROCEDURAL HISTORY: On May 20, 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 May 3, 2020 (decision # 100525). Claimant filed a timely request for hearing. On June 22, 2021, ALJ Janzen conducted a hearing, and on June 23, 2021 issued Order No. 21-UI-169275, reversing decision # 100525 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On June 28, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

The parties may offer new information, such as the documents the employer attached to their written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Copy Cats employed claimant as a customer service representative from July 23, 2018 until May 6, 2020.

(2) Claimant's job as a customer service representative required her to interact with customers face-to-face and help them with the employer's copy machines. Although the employer had social distancing and sanitizing safety precautions in place, "typically [claimant] had no choice but to be in close . . . quarters with [customers]." Transcript at 19.

(3) On March 9, 2020, claimant's mother was diagnosed with severe lung and heart disease.

(4) On March 20, 2020, the employer closed their stores and temporarily laid off claimant due to the COVID-19 pandemic.

(5) At the time of claimant's temporary layoff, her mother lived with claimant's grandparents and was frequently in the hospital due to her medical conditions. Claimant visited her mother in the hospital regularly. Her mother's doctor told claimant that if she wished to see her mother, due to the risk of spreading COVID-19 to her mother, it was "probably a bad idea . . . to work around the general public[.]" Transcript at 7. At some point after claimant's temporary layoff, claimant's mother moved in with claimant.

(6) In late April 2020, the employer decided to reopen their stores and end the temporary layoff of their employees. On April 29, 2020, the employer called claimant to confirm that she would be returning to work. Claimant said that she would return. The employer scheduled claimant to return to work on May 4, 2020. On May 4, 2020 and May 5, 2020, claimant called in and told the employer that she would be absent from work due to illness.

(7) On May 6, 2020, claimant did not report for work. The employer called claimant. Claimant informed the employer that she was voluntarily quitting work, and mentioned that she did not like her commute to the employer's store.

(8) At some point in July 2020, claimant started a new job.

CONCLUSIONS AND REASONS: Order No. 21-UI-169275 is set aside and this matter is remanded for further development of the record.

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.

The order under review concluded that claimant quit work with good cause because her mother's medical conditions presented claimant with a grave situation and she had no reasonable alternative but to leave work when she did because her customer service work could threaten her mother's health. Order No. 21-UI-169275 at 2. The record as developed does not support this conclusion.

Further inquiry is necessary to develop the record sufficiently to determine whether claimant quit work with good cause. On remand, the ALJ should inquire as to how long and on how many occasions claimant's mother was hospitalized, what the mother's prognosis was, and the status of her health when claimant was called back to work in May 2020. The ALJ should conduct an inquiry into facts necessary

for a determination whether the prospect of claimant not being able to continue visiting her mother in the hospital was such that no reasonable and prudent person would have continued to work for their employer for an additional period of time. The ALJ should inquire about whether the doctor ever told claimant that after a certain amount of time it would not have been harmful for her to interact with her mother while also working a customer service job. The ALJ should ask questions to develop when claimant's mother moved in with claimant and whether at that point claimant's mother was able to care for herself.

To aid in analyzing whether claimant left work for the employer because of her concerns about her mother's health or because of her commute to the employer's store, the ALJ should ask questions to determine when claimant's new job started in July 2020, and how claimant avoided interacting with the public at that job so as not to threaten her mother's health. The ALJ should also ask the employer whether they agreed with claimant's testimony that she cited her concerns about continuing to work for the employer given her mother's health, either when claimant was quitting or during a prior conversation. The ALJ also should ask the employer what accommodations, if any, they would have been willing to make to address claimant's concerns about interacting with customers due to claimant's fear that customer interaction posed a risk of spreading COVID-19 to her mother.

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 quit work with good cause, Order No. 21-UI-169275 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-169275 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 30, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-169275 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 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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