

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0530

Reversed & Remanded

PROCEDURAL HISTORY: On February 19, 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 February 23, 2020 (decision # 142354). Claimant filed a timely request for hearing. On June 2, 2021, ALJ Hoppe conducted an interpreted hearing, and on June 10, 2021 issued Order No. 21-UI-168542, affirming decision # 142354. On June 24, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Gessese Gebreslassie employed claimant as a caretaker until February 29, 2020.

(2) At some point during or prior to February 2020, claimant's brother, who lived in Ethiopia, became "sick." Transcript at 5. Because nobody else was available to care for his brother, claimant determined that he would need to travel to Ethiopia to care for him.

(3) On February 29, 2020, claimant voluntarily quit work so that he could travel to Ethiopia and care for his brother. Claimant had intended to book a flight for two weeks after February 29, 2020. Claimant used the time to prepare for the trip. He also looked for other work "on the side" during that time. Transcript at 6. However, due to the onset of the COVID-19 pandemic, claimant was unable to book a flight, and did not go to Ethiopia.

CONCLUSIONS AND REASONS: Order No. 21-UI-168542 is set aside and this matter 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 although “taking care of a family member can, under some circumstances, constitute good cause to quit,” claimant quit work without good cause because he did not pursue reasonable alternatives, such as “simply taking time off with employer,” prior to quitting. Order No. 21-UI-168542 at 4. The record as developed does not support that conclusion.

Further development of the record is necessary to determine whether reasonable alternatives to quitting were available to claimant. On remand, the ALJ should inquire as to the specific nature and timing of claimant’s brother’s illness, including the condition from which his brother was suffering and whether the condition required claimant to provide long-term care. If claimant expected his trip to Ethiopia to be of sufficiently short duration that he could return to the United States and resume working for the employer, the record should be developed to show whether the employer would have permitted claimant to take such a leave¹ and, if so, whether claimant would have been paid.² Additionally, while claimant testified at hearing that he decided to travel to Ethiopia because nobody else was available to care for his brother, the record also shows that claimant did not go to Ethiopia. Transcript at 5. Because claimant was, presumably, therefore unable to provide care for his brother, the record on remand should be developed to show whom, if anyone, provided care for his brother in claimant’s absence; and, if some other person did provide care for claimant’s brother, whether claimant knew or had reason to know of that person’s availability at the time that claimant quit.

The order under review also concluded that claimant quit work without good cause because he “has not proven that he could not possibly have continued working for employer past February 29, 2020, or that he could not have worked an alternative schedule in the period.” Order No. 21-UI-168542 at 4. However, claimant testified at hearing that he needed two weeks to prepare for his trip because he was “trying to pay all [his] credits,” and also had to shop for something to take with him on his trip. Transcript at 6. From this testimony, it is not clear how much time and effort claimant actually required to prepare for his trip. On remand, the ALJ should inquire as to the specific details of how claimant spent the two weeks before his planned trip. Additionally, while claimant testified that he was looking for other work during that two week period, the record is unclear as to when claimant learned that he would not be able to travel to Ethiopia due to travel restrictions, and therefore whether he began looking for work while also planning to travel to Ethiopia, or in response to learning that he would not be able to go. The record should be developed to clarify these points. If the former is true, the ALJ should also inquire as to whether claimant was looking for work in Oregon or Ethiopia; if in Oregon, whether he was looking for reduced-hour work that would have allowed him to continue preparing for his trip; and,

¹ See, e.g., *Fisher v. Employment Dept.*, 139 Or App 320, 911 P2d 975 (1996) (Before finding that claimant failed to consider reasonable alternatives to leaving work, it must be found that such alternatives existed).

² 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).

in that instance, whether the employer would have allowed claimant to work a reduced schedule for another two weeks while preparing for his trip.

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-168542 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-168542 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. Hettle;

A. Steger-Bentz, not participating.

DATE of Service: July 29, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-168542 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 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 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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