

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0532

Application for Review of Order No. 21-UI-169585 Dismissed
Order No. 21-UI-169583 Reversed
No Disqualification

PROCEDURAL HISTORY: On January 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able and available to work, and therefore not eligible to receive unemployment insurance benefits for from May 17, 2020 through June 20, 2020 (weeks 21-20 through 25-20) (decision # 141825). On January 12, 2021, the Department also served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective May 17, 2020 (decision # 142733). Claimant filed a timely request for hearing on both administrative decisions. On June 25, 2021, ALJ Janzen conducted a consolidated hearing on decisions # 141825 and 142733, at which the employer failed to appear. On June 29, 2021, ALJ Janzen issued Order No. 21-UI-169585 reversing decision # 141825 by concluding that claimant was able and available to work, and therefore eligible to receive benefits for weeks 21-20 through 25-20, and Order No. 21-UI-169583 affirming decision # 142733. On July 2, 2021, claimant filed timely applications for review of Orders No. 21-UI-169585 and 21-UI-169583 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-169585 and 21-UI-169583. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0532 and 2021-EAB-0533).

FINDINGS OF FACT: (1) Vacasa LLC employed claimant as a housekeeper from July 2019 to May 18, 2020.

(2) Prior to July 2019, claimant was diagnosed with depression and anxiety and was prescribed medication, which she took throughout her employment.

(3) In February 2020, claimant experienced substantial stress at work. The employer had an insufficient number of employees to complete the housekeeping assignments for their vacation rentals in areas of Bend, Oregon and Port Orford, Oregon, which resulted in claimant being overloaded with work. The employer also began asking their housekeepers to be “volunteers” to remove and transport the trash

from the rentals they had cleaned in the Bend area to the employer's Port Orford, Oregon location, 75 miles away. Transcript at 8. Claimant transported the garbage from the rentals she had cleaned "to do things right." Transcript at 26. Although claimant complained to the manager about her workload and the garbage removal issue, the employer did not resolve those problems. In early March 2020, claimant consulted with her mental health provider about her stress, and the provider recommended that she take a month off work, which she did after she presented a medical authorization from the provider to the employer.

(4) From March 29, 2020 through May 16, 2020 (weeks 14-20 through 20-20), the employer closed its business due to the COVID-19 pandemic.

(5) When the employer reopened on May 17, 2020, "[t]hey had no manager" at claimant's location, and claimant and only one other housekeeper returned to work. Transcript at 12. When claimant returned, the garbage issue had not been resolved, and because the employer was short staffed, claimant was assigned to complete five housekeeping assignments per day, which was "overwhelming." Transcript at 12. Claimant tried to speak to her previous manager, who was working in Portland, Oregon at that time, about her workload, but he was "unreachable." Transcript at 25.

(6) On May 18, 2020, claimant tried to complete her five assignments in Bend as best she could, after which she transported garbage from the last rental she had cleaned 75 miles from Bend to Port Orford, Oregon "before the next guest came." Transcript at 17. At the end of the day, claimant was "overwhelmed" with stress from the workload and concluded that she "couldn't do it anymore." Transcript at 6, 26. She was able to contact her manager that day and told him that she was quitting for those reasons.

CONCLUSIONS AND REASONS: Claimant's application for review of Order No. 21-UI-169585 presents no justiciable controversy and is dismissed. Order No. 21-UI-169583 is reversed. Claimant quit working for the employer with good cause.

Order No. 21-UI-169585. No Justiciable Controversy. On July 2, 2021, EAB received from claimant an application for review of Order No. 21-UI-169585, an order that allowed claimant benefits. Claimant did not assign error to any portion of the order, did not request reversal of any portion of the order, and alleged no facts entitling claimant to further relief in the matter. Accordingly, there is no justiciable controversy before EAB based upon claimant's application for review of Order No. 21-UI-169585. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because no justiciable controversy is presented, the application for review of Order No. 21-UI-169585 is dismissed and Order No. 21-UI-169585 remains undisturbed.

Order No. 21-UI-169583. Voluntary Leaving. 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 was diagnosed and treated for anxiety and depression,

likely permanent or long-term “physical or mental impairment[s]” 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.

Claimant voluntarily quit work on May 18, 2020 because she was overwhelmed with stress from her workload following her return to work on May 17, 2020. The order under review concluded that while claimant quit her job because she “felt overwhelmed by the amount of work,” she quit without good cause, reasoning that she did not notify the employer of her concerns before quitting, and that a reasonable and prudent person with the characteristics and qualities of a person with her impairments would have done so. Order No. 21-UI-169583 at 3. However, the record does not support that conclusion.

Prior to taking her leave of absence from work, claimant had complained to the employer about her workload, and the employer did not resolve the problem. The employer also knew that the work had been stressful for claimant because it had received the leave authorization from claimant’s mental health provider. Although claimant was away from work during her leave and thereafter while the employer was closed due to COVID-19, after just two days back at work on May 17 and 18, 2020, claimant was so “overwhelmed” with stress from the workload that she concluded that she “couldn’t do it anymore” and quit.

The record shows that when claimant returned to work on May 17, 2020, “[t]hey had no manager” at her location, and only one other housekeeper returned to work. Claimant’s situation therefore was worse than it had been when claimant took a month long leave of absence recommended by her mental health provider due to work-related stress. Although claimant attempted to speak to her former supervisor about her workload on May 17, 2020, he was in Portland and “unreachable.” The record fails to show that the staffing shortage would have been resolved in the foreseeable future if claimant had complained to anyone at the employer about her excessive workload. Nor was taking an additional, indefinite, and likely unpaid, medical leave of absence a reasonable alternative.¹ Faced with being so “overwhelmed” with stress from the workload that she concluded that she “couldn’t do it anymore,” a reasonable and prudent person suffering from anxiety and depression would not have continued working for the employer when the result likely would have been to further experience overwhelming stress. Accordingly, claimant had no reasonable alternative but to quit when she did.

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

DECISION: The application for review of Order No. 21-UI-169585, filed July 2, 2021 is dismissed. Order No. 21-UI-169585 remains undisturbed. Order No. 21-UI-169583 is set aside, as outlined above.

¹ 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).

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

DATE of Service: August 5, 2021

NOTE: Decision 2021-EAB-0533 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.

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.

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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.

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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