

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0620

Reversed & Remanded

PROCEDURAL HISTORY: On June 10, 2021, the Oregon Employment Department (the Department¹) served notice of an administrative decision concluding that claimant voluntarily quit without good cause and was disqualified from receiving unemployment insurance benefits effective May 16, 2021 (decision # 83451). Claimant filed a timely request for hearing. On July 13, 2021, ALJ Amesbury conducted a hearing, and on July 15, 2021 issued Order No. 21-UI-170347, affirming decision # 83451. On July 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Oregon Employment Department employed claimant in a limited duration position as a compliance specialist from June 29, 2020 until May 20, 2021.

(2) In response to school closures resulting from the COVID-19 pandemic, the employer offered paid “CXT” leave, which covered up to 40 hours per week of time during which an employee was unable to work because a child was home due to a daycare or school closure. Transcript at 28. The CXT leave program was available through June 30, 2021.

(3) At the time she worked for the employer, claimant had two 17-year-old twins and a twelve-year-old child. In spring 2021, claimant temporarily took custody of her sister’s two children, ages seven and ten. The three youngest children attended two different schools which were partially closed due to the pandemic. Claimant was unable to work while any of the young children were at home. The only times all three children were in school at the same time were Tuesdays and Thursdays from 9:00 a.m. until 12:20 p.m. After including time to transport the children to and from school, claimant was only available to work from about 9:20 a.m. until 12:00 pm on Tuesdays and Thursdays. Claimant generally felt “overwhelm[ed]” by these circumstances. Transcript at 14.

¹ Herein, “The Department” refers to the Oregon Employment Department in its capacity as the issuer of decision # 83451, and “the employer” refers to the Oregon Employment Department in its capacity as claimant’s employer.

(4) The employer allowed claimant to work a flexible, part-time schedule from home as result of these school closures. The employer also permitted claimant to use CXT leave for the times when she was unable to work because of school closures. Because claimant was only able to work a few hours at a time, she felt that she was not working productively on the complex projects to which she was assigned. The employer had not notified claimant that they were concerned about her work performance.

(5) By May 2021, claimant's CXT leave balance was nearly exhausted. Claimant had little vacation or other paid leave available to cover the time while the younger children were at home. The employer would have permitted claimant to take unpaid leave to cover that time if she had requested to do so, but claimant did not request to take unpaid leave.

(6) On May 20, 2021, claimant voluntarily quit working for the employer.

(7) The school year ended on or around June 17, 2021. At that point, claimant was able to work full time because she could enroll the younger children in summer programs. Claimant also was able to qualify for food stamp benefits after she quit working for the employer.

CONCLUSIONS AND REASONS: Order No. 21-UI-170347 is set aside and this matter remanded for further development of the record.

Voluntary Quit. 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 because she felt overwhelmed by her circumstances and because she felt unproductive at work as result of those circumstances; and that those reasons for quitting did not support a finding of good cause because she failed to seek reasonable alternatives to quitting such as taking a leave of absence until the school year ended, seeking additional accommodations, or asking for assistance or a change in assignments at work. Order No. 21-UI-170347 at 3–4. The record as developed does not support this conclusion.

As a preliminary matter, the hearing record does not clearly demonstrate whether claimant's decision to quit was primarily due to financial concerns relating to the exhaustion of or ineligibility for continued CXT leave, or whether she would have quit at the time she did regardless of the availability of paid leave because she felt overwhelmed by childcare duties. To the extent that claimant quit due to financial concerns, inquiry should be made to determine how much CXT leave, if any, remained available to claimant at the time that she quit. The record should also be developed to determine whether food stamps or other financial assistance might have been available to claimant had she taken an unpaid leave of absence instead of quitting, and whether the summer programs in which claimant enrolled her younger children would have been available to her if she had remained employed in any capacity.

Additionally, the hearing record does not show whether claimant was aware of the availability of those summer programs at the time that she quit. Whether claimant knew or had reason to know² at the time that she quit that she would be able, a few weeks after she quit, to enroll the younger children in those programs may bear on whether taking an unpaid leave of absence until those programs were available was actually a reasonable alternative to quitting. On remand, the record should be developed to resolve that question.

Finally, the hearing record contains no information regarding whether help from a spouse, partner, co-parent, family member, friend, or other person was available to claimant in order to alleviate her childcare burden. Because seeking such help may have been a reasonable alternative to quitting, the record on remand should be developed to determine if it was available and, if so, whether claimant sought it.

Voluntary Quit Prior to Planned Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. ORS 657.176(2)(c) requires a disqualification from benefits if claimant voluntarily left a job without good cause. However, ORS 657.176(7) states, “For purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that: (a) The discharge would not be for reasons that constitute misconduct connected with the work; (b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge, then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.”

At hearing, claimant testified that her limited-duration position was “coming to an end.” Transcript at 10. However, no additional evidence was offered to show when claimant’s position was scheduled to end or whether the employer would have likely extended the position had she not voluntarily quit. Even if the record on remand shows that claimant voluntarily quit without good cause, if she did so within 15 days of when the position was scheduled to end, claimant may have voluntarily quit prior to a planned discharge, and may therefore be subject, under ORS 657.176(7), to disqualification only through the week prior to the week in which the discharge was originally planned to have taken place. On remand, inquiry should be made to determine when claimant’s position was scheduled to end and whether the position would likely have been extended if she had not quit.

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, or whether she voluntarily quit work without good cause within 15 days of a planned discharge not for misconduct, Order No. 21-UI-170347 is reversed, and this matter is remanded.

² *See, e.g., Krahn v. Employment Dep’t.*, 244 Or. App. 643, 260 P.3d 778 (2011); *Early v. Employment Dep’t.*, 247 Or. App. 321, 360 P.3d 725 (2015).

DECISION: Order No. 21-UI-170347 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 1, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-170347 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 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 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 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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