

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0783

Reversed & Remanded

PROCEDURAL HISTORY: On June 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving benefits effective February 28, 2021 (decision # 140732). Claimant filed a timely request for hearing. On September 15, 2021, ALJ Amesbury conducted a hearing, and on September 16, 2021 issued Order No. 21-UI-174899, affirming decision # 140732. On September 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Jay Coil Fabricating LLC employed claimant as a welder from February 2001 until March 4, 2021.

(2) Claimant and the employer's owner had a tense working relationship. Claimant viewed the owner as a micromanager, and the two frequently disagreed about work matters.

(3) In the early months of 2021, claimant worked for the employer on an eight-hour per day, four days per week schedule. Claimant had a painful back condition and a family member for whom he needed to provide care, which caused him difficulty in maintaining his work schedule.

(4) On the late afternoon of March 4, 2021, claimant was working when the owner approached him and gave him advice about how to complete his work task. The owner's advice annoyed claimant. The two began arguing and the conversation turned to claimant's back condition and his responsibilities to care for his family member. The owner told claimant that if he was not happy working for the employer, the employer could "lay [claimant] off" so he "can find something else to do." Transcript at 8. Claimant responded to the owner that he "was fine with it, whatever. I'm - I'm done." Transcript at 9. Claimant understood that by agreeing to be "laid off," "[i]t was pretty much understood that [claimant] probably wouldn't be coming back, and that [he] was gonna find another job." Transcript at 6.

(5) Claimant worked the remaining hour of his shift and went home. Claimant never again worked for the employer. Had claimant decided that he did not want "to be laid off," he could have kept working for the employer. Transcript at 17, 24.

CONCLUSIONS AND REASONS: Order No. 21-UI-174899 is reversed and the matter remanded for further development of the record.

Nature of the Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (September 22, 2020).

Although the parties at hearing characterized the nature of claimant’s work separation as a layoff, the preponderance of the evidence shows that claimant voluntarily quit work at the end of his shift on March 4, 2021. Transcript at 5, 16. Continuing work was available following the end of claimant’s shift on March 4, 2021 because the record shows that had claimant decided that he did not want “to be laid off,” he could have continued working for the employer. Transcript at 17, 24. The record reflects that claimant understood that agreeing to the employer’s proposal meant ending the employment relationship because “[i]t was pretty much understood that [claimant] probably wouldn’t be coming back, and that [he] was gonna find another job.” Transcript at 6. Therefore, because the record shows that, more likely than not, claimant could have continued to work for the employer for an additional period of time but was unwilling to do so upon completing his shift on March 4, 2021, the work separation was a voluntary leaving that occurred on March 4, 2021.

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). 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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. In pertinent part, “compelling family reasons” is defined under OAR 471-030-0038(1)(e) as follows:

* * *

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off[.]

* * *

OAR 471-030-0038(1)(f) defines “a member of the individual’s immediate family,” as used in OAR 471-030-0038(1)(e)(B), above, to include “spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.”

The order under review concluded that claimant quit work without good cause because he failed to show that his work situation was grave. Order No. 21-UI-174899 at 3. Although the record supports that the work separation was a voluntary leaving, the record as developed does not support the order’s conclusion that claimant voluntarily quit without good cause.

Further inquiry is necessary to determine whether claimant quit work without good cause. On remand, the ALJ should develop whether claimant quit working for the employer because of his back condition and/or his responsibilities to care for his family member, or because of the tension between claimant and the owner and claimant’s view that the owner was a micromanager. To the extent the record on remand shows that claimant quit because of his responsibilities to care for his family member, the ALJ should ask questions to determine whether claimant had good cause to leave work due to compelling family reasons. To that end, the ALJ should inquire whether the family member was a member of claimant’s immediate family as defined by OAR 471-030-0038(1)(f). Also, the ALJ should develop whether claimant had determined that he could not adequately care for the family member under his work schedule and, if so, if he ever asked the employer for a reduced schedule or a leave of absence to accommodate the family member’s necessary care. Further development of the record is also required to determine the nature and extent of claimant’s back condition and whether the circumstances of that condition amounted to good cause for claimant to leave work.

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 without good cause, Order No. 21-UI-174899 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-174899 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: November 4, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-174899 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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