

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0803

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 21, 2019 (decision # 142119). Claimant filed a timely request for hearing. On September 14, 2021, ALJ Mott conducted a hearing, and on September 15, 2021 issued Order No. 21-UI-174762, reversing decision # 142119 by concluding that claimant voluntarily quit work with good cause, and was not disqualified from receiving benefits based on the work separation. On September 30, 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).

FINDINGS OF FACT: (1) Hoagland Properties, Inc. employed claimant as a front desk agent from April 17, 2019 until April 19, 2019.

(2) In 2000, claimant was diagnosed with chronic fatigue syndrome (CFS). Around the time that she initially received the diagnosis, claimant's symptoms were severe enough that she was bedridden for two years. In 2002, claimant was diagnosed with fibromyalgia. The two conditions caused claimant to experience fatigue, nausea, headaches, muscle pain, and confusion. Afterwards, claimant learned how to manage her conditions by taking breaks as needed and generally avoiding overexertion. If claimant did not do so, the conditions could be triggered, which could potentially incapacitate her.

(3) Claimant's duties for the employer required her to stand at the hotel's front desk for long periods of time. Claimant advised her manager that she had a medical condition and requested to sit down at a chair at the front desk, but the manager refused claimant's request. Claimant asked the manager if she

could remain seated while alone but stand up when guests were present, and the manager again refused the request. The manager also told claimant that the company was “exempt from disability laws because they only apply to those with a certain amount of employees and they were under that amount.” Exhibit 1 at 1–2. Thereafter, claimant attempted to continue working while remaining standing.

(4) The constant standing at the desk exacerbated claimant’s CFS and fibromyalgia symptoms, causing her to experience confusion and worsening pain. As a result, claimant determined that she would no longer be able to perform the job.

(5) On April 19, 2019, as a result of her inability to continue performing the job while standing, claimant informed her manager that she was voluntarily quitting that day. Claimant did not consider speaking to the employer’s human resources office or any person in a position of authority over the manager. If she had done so, the employer may have been able to accommodate claimant’s disabilities and permit her to sit while working.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

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) (December 23, 2018). “[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 had chronic fatigue syndrome and fibromyalgia, permanent or long-term “physical or mental impairments” 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 because the employer did not accommodate her medical conditions by allowing her to sit while working, and without such accommodations her conditions would have been exacerbated to the point of rendering her unable to work. This constituted a grave reason for quitting.

At hearing, claimant testified that she had requested of her manager, on more than one occasion, permission to sit while working, and that the manager refused the request each time. Transcript at 23. The employer’s witness, who was the general manager at the time of the hearing but had been working at another of the employer’s offices during the period of claimant’s employment, disputed this, testifying that claimant’s statements about the refused accommodations were “false” and that the employer would have granted claimant’s request for accommodations if she had talked to them. Transcript at 17, 19. However, the employer’s witness also confirmed that they were not present for the conversations that claimant had with the then-manager about claimant’s need for accommodations. Transcript at 20. Because claimant’s testimony is first-hand, and the employer’s testimony is based on speculation, claimant’s testimony is afforded more weight on that point. Therefore, the record shows that claimant did request, and was refused, accommodations for her disability.

To the extent that the employer might have accommodated claimant had she made the request to the human resources department or some other person, the record does not show that this was a reasonable alternative to quitting. Claimant established that when her conditions were exacerbated—as they were after working for the employer for a few days—she experienced confusion and “[didn’t] think and/or function well[.]” Transcript at 13. Claimant also testified that she did not think of speaking to any other person besides her then-manager about the matter. Transcript at 13. Additionally, the manager specifically told claimant that the employer was exempt from legal requirements to accommodate employees’ disabilities. When viewed objectively, it is reasonable to infer that claimant’s failure to make further efforts to secure accommodations was at least partially caused by the confusion and poor cognitive function that arose from her exacerbated symptoms, as well as the belief that any efforts to do so would be futile because of the employer’s claimed “exemption.” While a reasonable and prudent person without claimant’s medical conditions and who was not suffering from a cognitive impairment might have sought help from human resources or other authority figures before quitting, the same cannot be said for a reasonable and prudent person suffering from those conditions. Therefore, the record shows that claimant quit for a reason of such gravity that she had no reasonable alternative but to quit.

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

DECISION: Order No. 21-UI-174762 is affirmed.

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

DATE of Service: November 5, 2021

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 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 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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