

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0834

*Reversed
No Disqualification*

PROCEDURAL HISTORY: On May 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 82404). The employer filed a timely request for hearing. On September 23, 2021, ALJ Kaneshiro conducted a hearing, and on September 24, 2021 issued Order No. 21-UI-175594, concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective March 21, 2021. On October 13, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pearl Buck Center LLC employed claimant from October 2015 until March 27, 2021 as a job coach and supportive living provider.

(2) In March 2020, claimant's 16-year-old son's school closed to in-person learning due to COVID-19. Claimant's son began attending classes and tutoring online. No internet provider offered internet service at claimant's residence, and therefore claimant did not have internet access at the home she shared with her son. In order for her son to attend classes and tutoring, claimant took her son and dropped him off daily at public places where he could use the internet. Claimant's son "struggle[ed] emotionally" during this time and had difficulty completing his schoolwork. Transcript at 5. Claimant's only free time during the day was during her lunch break, which she spent helping her son. Claimant had to respond to telephone calls from her son throughout her work hours, which interrupted her work with her clients.

(3) During the 2020 academic year, claimant's son progressively fell behind in his schoolwork, and in addition to online tutoring, began participating in a program for youth who needed additional assistance with school. The program was only offered online. Claimant requested a leave of absence during her son's 2020 spring semester of school to assist her son with school and his emotional needs. The leave of absence was unpaid and claimant did not receive unemployment insurance benefits at that time.

(4) In September 2020, claimant had to take another unpaid leave of absence due to the threat of wildfire at her residence. Sometime after claimant returned to work, claimant requested one day off from work to see a family member she had not seen in six years. The employer refused to allow claimant time off to see her family member due to the needs of claimant's clients and because claimant had already taken so much time off.

(5) During 2021, claimant's son's school opened for part-time in-person learning. Claimant's son was not able to attend school in person due to his mental health. Claimant's son continued to attend school, tutoring and the special program for youth needing assistance online during 2021. Claimant continued to drop her son off at public spaces to use public internet for school. However, at times he was unable to find a public space indoors and had to sit outside at parks or other outdoor areas for internet access. His academic performance and mental health continued to decline. Claimant understood that it was going to be necessary for him to attend summer school for academic reasons. Claimant decided that her only reasonable option was to spend more time assisting her son, which she felt she could only do if she quit work. Claimant felt she could not work until her son was experiencing success with schoolwork, and until his mental health improved, and claimant could not predict when these things would occur.

(6) There was no other family member available to assist claimant's son with transportation or his schoolwork. Claimant's residence was not within walking distance of public internet access.

(7) The employer would have granted claimant an unpaid leave of absence had claimant requested one in March 2021. Claimant did not request a leave of absence before she gave notice on March 15, 2021, that she would quit work on March 26, 2021.

(8) On March 27, 2021, claimant quit work to assist her son with his schoolwork and support him regarding his mental health conditions.

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

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1)(f), a COVID-19 related situation includes when "[a] person is unable to work because they have to stay home to care

for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus[.]

The order under review concluded that claimant did not quit work due to a COVID-19 related situation because her son's school was not closed when claimant quit work. Order No. 21-UI-175594 at 3. The order also concluded that claimant's situation with her son, although grave, was not a situation of such gravity that no reasonable person would have continued to work for their employer for an additional period of time. Order No. 21-UI-175594 at 3. The order found as fact that the employer would have granted claimant a leave of absence from work, and that claimant knew a leave of absence was an option and had the reasonable alternative of requesting a leave of absence rather than quitting work when she did. Order No. 21-UI-175594 at 3. The record supports the conclusion that claimant did not quit work due to a COVID-19 related situation. Because the school claimant's son attended was not closed due to COVID-19 when claimant quit work, claimant did not quit work due to a COVID-19 related situation. Therefore, claimant did not establish that she had good cause to quit work pursuant to the OED Temporary COVID-19 Rule.

However, the record also shows that claimant had good cause to quit due to the grave situation posed by her son's academic and mental health needs, and the lack of a reasonable alternative to quitting to meet those needs. Claimant faced a grave situation because her minor son was unable to access distance learning at home, had to be left alone to access internet and attend school in public areas, and was not experiencing success in school by doing so. Moreover, her son's mental health suffered due to the circumstances, and claimant felt her support would help her son move toward academic success and improved mental health.

Requesting a leave of absence was not a reasonable alternative to quitting for claimant. Despite the employer's apparent willingness to approve another unpaid leave of absence for claimant, taking such leave again was not a reasonable alternative for claimant. 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). The record does not show that claimant's son would be able to rehabilitate his academic status quickly, or that his mental health would improve with only a short-term period of assistance from claimant. Claimant had taken two leaves of absence before, and her son's difficulties persisted when claimant returned to work. The record does not show that claimant had paid time off available to her. Thus, because her son's situation was unlikely to resolve quickly, and because the record does not show that claimant qualified for paid time off work, any leave of absence she might have taken instead of quitting would have been both protracted and unpaid, and therefore would not have been a reasonable alternative to quitting. Moreover, the record does not show that anyone else was available to assist claimant's son.

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-175594 is set aside, as outlined above.

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

DATE of Service: November 17, 2021

NOTE: This decision 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 Tự 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 – សេចក្តីសម្រាប់នៅមានដល់ប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រាប់នេះ សូមទាក់ទងគណៈកម្មការខេត្តរណ៍ការងារភ្នាមឱ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រាប់នេះទេ លោកអ្នកអាចជាក់ពាក្យបីដែលស្ថិតនៅទីតាំងណាមួយគឺឡាយគុណាហរខេត្តរណ៍ដែល Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសាសន៍នៅខាងចំងបញ្ហាប់នៃសេចក្តីសម្រាប់នេះ។

Laotian

ເອົາໃຈໄສ – ຄໍາຕັດສິນນີ້ມີຜົນກະທິບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການທ່ວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນຫັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຢືນຄໍາຮ້ອງຂໍການທີບໜວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢ່າງຍໍາຍຸດຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطلة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمرجعية القانونية بمحكمة الاستئناف بأورغون وذلك باتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می‌گذارد. اگر با این تصمیم موافق نیستید، بلافضله با هیأت فرامخواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.