

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0867

Reversed & Remanded

PROCEDURAL HISTORY: On July 15, 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 effective June 23, 2019 (decision # 80424). Claimant filed a timely request for hearing. On October 5, 2021, ALJ Wardlow conducted a hearing, and on October 6, 2021 issued Order No. 21-UI-176563, affirming decision # 80424. On October 25, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Legacy Emanuel Hospital & Health Center employed claimant as a laboratory technician from August 28, 2017 until June 23, 2019.

(2) During claimant's employment with the employer, he experienced conflict and abuse in his marriage, which caused him to experience stress, depression, and low energy. Claimant also believed that he developed type-2 diabetes as a result of the stress from his marriage. Claimant once sought help from a doctor to cope with the stress, but did not follow up further.

(3) In addition to the mental and physical effects of the stress, claimant was also concerned that he might become physically abusive towards his wife.

(4) Claimant ultimately determined that he needed to remove himself from the situation with his wife. On June 10, 2019, claimant notified the employer that he intended to resign on June 23, 2019. On June 23, 2019, claimant voluntarily quit work. About two weeks later, claimant, who lived in Portland, Oregon, traveled to Denver, Colorado to stay with a cousin who lived there. While he stayed in Denver, claimant's cousin "was taking care of" him and was "working hard to calm [claimant] down." Transcript at 8. Claimant eventually returned to Portland and reunited with his wife.

(5) Prior to quitting, claimant did not seek a leave of absence from the employer, although he was aware that he could have done so. Transcript at 18. Had claimant requested a leave of absence from the employer either for medical issues or his marital issues, the employer would have considered granting the request.

CONCLUSIONS AND REASONS: Order No. 21-UI-176563 is set aside and this matter remanded for further development of the record.

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). 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. 29 C.F.R. § 1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Per ORS 657.176(12), an individual may not, in relevant part, be disqualified from receiving benefits under ORS 657.176(2)(c) if the individual or a member of the individual’s immediate family is a victim of domestic violence, stalking, sexual assault or intimidation, or the individual believes that the individual or a member of the individual’s immediate family could become a victim of domestic violence, stalking, sexual assault or intimidation; and the individual leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or a member of the individual’s immediate family from domestic violence, stalking, sexual assault or intimidation that the individual reasonably believes will occur as a result of the individual’s continued employment or acceptance of work.

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. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e)(A) to include domestic violence, as defined in OAR 471-030-0150, which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or a member of the individual’s immediate family.

Claimant voluntarily quit work in connection with the ongoing domestic dispute with his wife and the effects it had on his mental and physical health. The order under review concluded that claimant did not quit for good cause because although he “may have been experiencing a grave situation, he did not pursue reasonable alternatives” such as seeking a leave of absence or speaking to a medical professional about the stress and depression he had been experiencing. Order No. 21-UI-176563 at 2–3. The record as developed does not support this conclusion.

As a preliminary matter, the record as developed does not establish a clear timeline of the circumstances surrounding claimant’s decision to quit work in June 2019 or his return from Colorado some time later, despite the fact that the conflict with his wife had been ongoing for some time. On remand, further inquiry should be made to determine whether an escalation of abusive behavior, an escalation of medical or mental health symptoms, or some other occurrence immediately precipitated claimant’s decision to resign in June 2019. In particular, claimant’s testimony suggested, but did not make explicit, that his wife was or had become physically abusive towards him. Transcript at 11. The ALJ should therefore ask questions to determine whether claimant, at the time he decided to quit, either was a victim of domestic violence or believed that he could become one, and if so whether he quit in order to protect himself from domestic violence.

If the record on remand does not show that claimant quit in order to avoid domestic violence, further inquiry should be made to determine whether claimant had any reasonable alternative to quitting. Although claimant testified that he was aware that he could have sought a leave of absence, the record is silent as to how long claimant stayed in Colorado with his cousin, whether he knew in advance how long he would be in Colorado, or if he initially believed that he would return to Oregon at all. Therefore, further inquiry is needed to show whether claimant would have had a reason to believe, at the time he quit, that a leave of absence would have covered his time in Colorado. The record should also be developed to show whether claimant would have been paid or otherwise accrued employment benefits during such a leave of absence. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (“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).

Finally, further inquiry should be made regarding claimant’s mental health and state of mind at the time that he quit. Claimant testified that he had been suffering from stress and depression at the time that he quit, and that he had sought the advice of a doctor at one point. However, the record does not show when claimant visited the doctor or whether he was given specific diagnoses of mental or physical health issues. If claimant was suffering from specific mental health disorders at the time that he quit, the question of whether claimant quit for a reason of such gravity that he had no alternative but to quit must be considered from the perspective of a reasonable and prudent person with the characteristics and qualities of an individual with such impairments. Similarly, the ALJ should also inquire as to why claimant did not seek a leave of absence prior to quitting, including whether it was the result of his state of mind relating to the domestic dispute with his wife.

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, Order No. 21-UI-176563 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-176563 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: December 1, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-176563 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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