

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0942

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective June 7, 2020 (decision # 80949). Claimant filed a timely request for hearing. On October 20, 2021, ALJ Wardlow conducted a hearing, and on October 22, 2021 issued Order No. 21-UI-177797, reversing decision # 80949 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On November 9, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring 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).

FINDINGS OF FACT: (1) Dorothy Tester Sales, Inc. employed claimant as a gas fireplace installer from February 9, 2017 until June 10, 2020.

(2) When claimant was a child, he developed rheumatic fever. The rheumatic fever caused claimant to develop a heart murmur and respiratory issues that made him more susceptible to infections. The heart murmur and respiratory issues became lifelong conditions.

(3) Claimant's work for the employer required him to interact with customers on a routine basis, and to go into their homes when he installed fireplaces. Following the onset of the COVID-19 pandemic, the employer implemented COVID-19 safety precautions for employees, which included requiring them to wear face coverings and gloves. Claimant abided by the safety precautions but it was not possible to require customers to abide by them when claimant installed fireplaces in their homes.

(4) Soon after the onset of the COVID-19 pandemic, claimant contacted a representative of the American Heart Association and learned that because of his heart murmur and respiratory issues he was

at higher risk of complications from COVID-19. Claimant understood that because of his heart murmur and respiratory issues, he needed to be “more careful than the normal person” to avoid infection. Transcript at 11.

(5) Due to his higher risk of complications from COVID-19, claimant decided he should quit working for the employer because he was concerned about the risk of exposure to COVID-19 given that his work required him to interact with customers on a routine basis.

(6) On May 27, 2020, claimant gave notice of his intent to quit working for the employer effective June 10, 2020. Claimant worked through the notice period and resigned as planned. Thereafter, claimant moved into a house he owned in a sparsely populated area of Oklahoma and isolated there.

(7) Prior to resigning, claimant did not raise his health concerns with the employer, request a leave of absence, or ask whether he could transfer into a different position that did not require him to interact with the public. However, at the time claimant quit, there were no other positions with the employer available to claimant.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 a heart murmur and respiratory issues caused by rheumatic fever, which are permanent or long-term “physical or mental impairment[s]” 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 established good cause for voluntarily leaving work. Claimant quit because he was concerned about the risk of exposure to COVID-19 given that his work required him to interact with customers on a routine basis. Claimant’s situation was grave because his heart murmur and respiratory issues put him at higher risk of complications from COVID-19 and it was not possible to require customers to abide by the employer’s COVID-19 safety precautions when claimant installed fireplaces in their homes. Prior to resigning, claimant did not pursue the alternatives of raising his health concerns with the employer or asking whether he could transfer into a different position that did not require him to interact with the public. However, the record shows that doing so would have been futile because, at the time claimant quit, there were no other positions with the employer available to him. Claimant also did not request a leave of absence prior to voluntarily leaving work. However, this alternative also was likely futile because, had claimant requested and taken a leave of absence, the record does not show that the grave situation claimant faced at work would have abated during any such leave. Claimant therefore had good cause to quit because he established that no reasonable and prudent person with the characteristics and

qualities of an individual with a heart murmur and respiratory issues caused by rheumatic fever would have continued to work for the employer for an additional period of time.

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

DECISION: Order No. 21-UI-177797 is affirmed.

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

DATE of Service: December 16, 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 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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