

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0951

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 145806). The employer filed a timely request for hearing. On September 15 and October 19, 2021, ALJ Scott conducted a hearing, and on October 26, 2021 issued Order No. 21-UI-178134, reversing decision # 145806 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 25, 2021. On November 8, 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 she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant also asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

EVIDENTIARY MATTER: The record contained multiple documents without page numbers, all of which were marked as "Exhibit 1." As a clerical matter, EAB compiled these documents into a single Exhibit 1. EAB also marked the previously-unmarked first page of the exhibit, based on the ALJ's description in the hearing record. September 15, 2021 Audio Record at 5:05. A copy of the compiled Exhibit 1 has been provided to the parties with this decision.

FINDINGS OF FACT: (1) Full Potential Men's Clinic, LLC employed claimant as a certified medical assistant (CMA) from November 18, 2020 until April 27, 2021. The employer's clinical staff consisted of the owner, three other doctors, and CMAs who supported the doctors. Only the owner retained authority to hire or fire staff.

(2) Around 2006, claimant was diagnosed with anxiety disorder.

(3) Starting around March 2021, claimant's relationship with another CMA at the clinic became difficult. Around April 13, 2021, claimant approached the clinic's owner about the issues she had been having with the other CMA. The owner told claimant that he would talk to the other CMA about the problem, but the problem did not resolve.

(4) On April 19, 2021, claimant notified the employer that she intended to resign on May 26, 2021 because she was getting married and planning to move out of the area. On April 21, 2021, claimant notified the employer that she had decided to move her last day of work up to May 15, 2021 in order to "pack, get [her] wedding things taken care of, and just breathe before everything gets hectic." Exhibit 1 at 27.

(5) On April 27, 2021, claimant became involved in a "very verbal altercation," which almost turned physical, with the other CMA with whom she had a difficult working relationship. September 15, 2021 Transcript at 5. The altercation was the result of a disagreement regarding helping each other with matters of patient care. Claimant found the ongoing conflict between herself and the other CMA to be "very stressful," and it caused her to experience anxiety and panic attacks. September 15, 2021 Transcript at 17.

(6) Later on April 27, 2021, as a result of the altercation with the other CMA, claimant notified the owner of the clinic, via a Google chat, that she would "not be coming back tomorrow" because she "blew up at [the other CMA] for her horrible attitude towards [claimant] and [claimant] will not work with suck [*sic*] a nasty hostel [*sic*] person any longer." Exhibit 1 at 13. Claimant also sent a message via Google chat to another doctor at the clinic—claimant's direct supervisor—which stated, "I will not be here tomorrow. I can't do this anymore. I am sorry." Exhibit 1 at 16. Claimant did not return to work for the employer after April 27, 2021.

(7) Had claimant not left on April 27, 2021, the employer would have permitted her to continue working for them through her planned last day of work in May 2021. Claimant would have been willing to continue working for the employer if they could have "come to some sort of resolution" regarding the matter with the other CMA. September 15, 2021 Transcript at 14.

(8) At the time that claimant quit, the employer's clinic was short-staffed and in need of more CMAs.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

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).

At hearing, the employer asserted that claimant voluntarily quit on April 27, 2021, while claimant asserted that she had intended to continue working through her planned last day of work in May 2021 but was discharged on April 27, 2021. Claimant testified that when she notified the employer on April 27, 2021 that she could not continue to work with the other CMA, she also notified them that she still intended to work through May 26, 2021, but that two of the other doctors at the clinic told her that day

“not to come back.” September 15, 2021 Transcript at 13. Claimant also testified that the owner told her that “I’m sorry, and I feel that it’s best that you do go.” September 15, 2021 Transcript at 11. In their testimony, however, three of the employer’s witnesses—the owner, claimant’s direct supervisor, and another doctor at the clinic—refuted claimant’s assertion that any of the clinic’s doctors had told her not to return to work. September 15, 2021 Transcript at 27, 45; October 19, 2021 Transcript at 25.

Claimant did not dispute that she had originally intended to resign on May 26, 2021. However, she testified that her statement on April 27, 2021 that she was “done” meant only that she was no longer interested in engaging in the conflict with the other CMA. October 19, 2021 Transcript at 79. The record evidence does not support this assertion. Claimant’s explanation at hearing as to what she meant in her messages on April 27, 2021 strains credulity. On April 27, 2021, claimant was already planning to quit in less than a month’s time, and was facing the combined stressors of an impending wedding, a move, and interpersonal conflict at work. Under such circumstances, it is not difficult to believe that an individual would simply choose to leave work a few weeks early in order to eliminate one of those stressors. By contrast, it is difficult to believe that two doctors at the clinic, neither of whom had the authority to discharge claimant, would nevertheless have both told claimant that she was discharged, and then testify to the contrary at hearing—particularly when the clinic was already short-staffed. For that reason, the record shows that, more likely than not, claimant chose to quit work on April 27, 2021 due to the stress of the conflict with the other CMA.

Voluntary Quit. 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). “[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 anxiety disorder, a permanent or long-term “physical or mental impairment” 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.

As discussed above, claimant voluntarily quit work on April 27, 2021 due to the stress of the conflict she had with another CMA. Claimant suffered from anxiety disorder, and the conflict exacerbated her condition to the point that she experienced panic attacks. While this may have constituted a grave reason for quitting for a person who suffered from claimant’s condition, claimant did not meet her burden to show that she had no reasonable alternative but to quit. For instance, claimant did not offer evidence to show that she attempted to speak to the owner about the April 27, 2021 incident prior to quitting, despite her testimony that she would have been willing to continue working for the employer if the employer was able to resolve the conflict. The record shows that the owner had already been receptive to speaking to claimant about her issues with the other CMA. As such, he would have, more likely than not, been willing to discuss the matter with claimant again and make further attempts to resolve it. Therefore, claimant did not show that she had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 25, 2021.

DECISION: Order No. 21-UI-178134 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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