

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0996

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 4, 2020 (decision # 140659). Claimant filed a timely request for hearing. On October 25, 2021, ALJ Messecar conducted a hearing at which the employer failed to appear, and on November 1, 2021 issued Order No. 21-UI-178600, affirming decision # 140659. On November 22, 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)

FINDINGS OF FACT: (1) Nike Retail Services Inc. employed claimant, last as Director of Commercial Analytics, from June 2015 to October 9, 2020.

(2) The employer paid claimant \$200,000 annually. However, claimant's work environment was "high[ly] stress[ful] and toxic" for claimant. Transcript at 25.

(3) In 2018 and 2019, claimant's medical providers diagnosed claimant with anxiety, depression, and irritable bowel syndrome (IBS). Claimant's medical conditions were exacerbated by her stressful work environment, with symptoms that included "consistent" abdominal pain while she worked. Transcript at 14. Claimant's medical providers recommended during multiple visits with claimant that she pursue a medical leave of absence or consider quitting work with the employer because "the workplace conditions were not conducive to [her] health." Transcript at 19.

(4) From March 2019 to May 2019, pursuant to the advice of her medical providers, claimant took a short-term medical leave of absence due to the negative impact of her work environment on her physical

health. Upon her return to work, claimant's work environment continued to have a detrimental impact on her mental and physical health, and claimant continued to experience abdominal pain while working.

(5) From May 2020 to June 2020, pursuant to the advice of her medical providers, claimant took a second short-term medical leave of absence due to the negative impact of her work environment on her physical health. Upon her return to work, claimant's work environment continued to have a detrimental impact on her mental and physical health, including the continuation of her abdominal pain. Claimant's medical provider again recommended that she leave the employer and told claimant that, in the provider's experience with employees from the same employer, "the ones that have gotten better are the ones that leave." Transcript at 20.

(6) In mid-September 2020, claimant became aware that the employer was having internal discussions about a potential pandemic-related "reorganization" of the company, which, if it happened, would include moving some employees to new roles with the employer, and laying off others. Transcript at 6. Because claimant continued to experience adverse health consequences from her stressful work environment, she spoke to a manager about the possibility of assuming a different, potentially less stressful role with the employer as part of any reorganization. The manager took offense "that [claimant] would even want to consider leaving [their] team." Transcript at 23. Claimant also asked her human resources business partner (HR) if she had the option to volunteer to be laid off pursuant to any reorganization. HR told claimant that the employer did not provide that option but her "comments . . . would be taken into consideration." Transcript at 9. HR told claimant that her options were to wait and see if she was laid off pursuant to any reorganization, or to leave the employer, and if she chose to leave the employer, they "wouldn't deny [her] unemployment." Transcript at 12.

(7) On October 9, 2021, claimant chose to voluntarily leave work to protect her health.

CONCLUSIONS AND REASONS: Claimant voluntarily quit working for the employer 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) (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). Claimant had depression, anxiety, and IBS, 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. OAR 471-030-0038(4).

The order under review concluded that claimant failed to show that she suffered from a permanent or long-term "physical or mental impairment" such that her decision to quit work should be evaluated from the standpoint of a reasonable and prudent person with the characteristics and qualities of an individual with those impairments. Order No. 21-UI-178600 at 3. The order under review also concluded that,

when evaluated from the standpoint of a reasonable person of normal sensitivity, exercising ordinary common sense, claimant failed to show that she had good cause to quit work. Order No. 21-UI-178600 at 3. The order under review reasoned that because claimant testified that she would not have quit her job but for the employer's representation that they would not oppose any claim she made for unemployment insurance benefits, and because "quitting a job to receive unemployment insurance benefits is not a grave situation," claimant therefore did not have good cause to leave the employer. Order No. 21-UI-178600 at 3. In addition, the order under review reasoned that claimant had the reasonable alternative of continuing to work for the employer until after any reorganization and then determine, at that point, whether she wanted to remain with the employer or seek other work. Order No. 21-UI-178600 at 3. The record does not support these conclusions.

As an initial matter, the record shows that claimant suffered from permanent or long-term "physical or mental impairments" during her period of employment with the employer. Claimant credibly testified that in 2018, her medical providers diagnosed her with anxiety, depression, and IBS, each of which is a permanent or long-term "physical or mental impairment" as defined in 29 CFR §1630.2(h). Transcript at 15-16. Claimant is therefore entitled to have the determination of whether she left work for good cause evaluated from the standpoint of a reasonable and prudent person with the characteristics and qualities of an individual suffering from anxiety, depression and IBS.

Claimant voluntarily left work with good cause. The record shows that while working in the employer's "high[ly] stress[ful] and toxic" environment, claimant's medical conditions worsened with her daily duties with the employer. Claimant continually sought the care of her medical providers and heeded their advice that she take, on two separate occasions, health-related leaves of absence. However, neither leave of absence resolved the negative impact of her work environment on her health, and after her second leave of absence, claimant continued to experience "mental anguish" as the situation with her employment continued to deteriorate. Claimant's deteriorating mental and physical health constituted a grave situation that, when coupled with her medical providers' recommendations that she consider leaving work for the sake of her health, left her no reasonable alternative but to leave work. Claimant's willingness to leave a \$200,000 per year job for the mere possibility of receiving unemployment insurance benefits underscores the gravity of the situation posed by the impact of claimant's working conditions on her health. Under these circumstances, no reasonable and prudent person with anxiety, depression, and IBS, would have continued to work for the employer for an additional period of time.

The record also shows that claimant had no reasonable alternatives to quitting her employment. Contrary to the order under review's conclusion, continuing to work for the employer and then reevaluating her situation after the employer's reorganization was not a reasonable alternative for claimant given the negative impact of her work environment on her health and the deteriorating nature of her work situation at the time claimant quit. Furthermore, the record does not show that a reorganization was certain to occur, or if it did, when it would occur. Nor would it have been reasonable for claimant to seek another leave of absence from the employer given that the first two leaves of absence she had taken did not improve her physical or mental health, nor her work environment. For the foregoing reasons, the record shows that claimant voluntarily quit work with good cause. Claimant therefore is not disqualified from receiving unemployment insurance benefits on the work separation.

DECISION: Order No. 21-UI-178600 is set aside, as outlined above.

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

DATE of Service: December 30, 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.

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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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