

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0146

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause within 15 days of a planned discharge that would not have been for misconduct, and that claimant was therefore disqualified from receiving unemployment insurance benefits until October 17, 2021 (decision # 92705). The employer filed a timely request for hearing. On January 4, 2022, ALJ Murdock conducted a hearing, and on January 6, 2022 issued Order No. 22-UI-183465, modifying decision # 92705 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective October 10, 2021. On January 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) St. Charles Health System, Inc. employed claimant as a facilities coordinator from September 12, 2005 until October 12, 2021.

(2) For approximately the last 18 months of claimant's employment, claimant performed her job remotely. Claimant worked Monday through Friday.

(3) In or around September 2021, the employer informed their employees that in order for the employer to comply with a state mandate, employees would be required to either be fully vaccinated against COVID-19 by October 18, 2021 or obtain an exception from vaccination based on medical or religious grounds. The employer also determined that unvaccinated employees, regardless of whether they had

been granted an exception, would not be permitted to work on-site at the employer's facilities after October 18, 2021. Claimant requested a religious exception, and the employer granted claimant's request. Claimant did not become vaccinated against COVID-19.

(4) After the employer granted claimant's religious exception from vaccination, they informed her that she would not be allowed to continue working while unvaccinated after October 18, 2021 because she would no longer be allowed to perform 100% of her role remotely. Instead, claimant would have to either accept an indefinite unpaid leave of absence or resign.

(5) On October 12, 2021, claimant voluntarily quit working for the employer because becoming vaccinated would have violated her religious beliefs. The employer would have permitted claimant to continue working for the employer through October 15, 2021, but claimant did not do so because she believed that a significant number of unvaccinated employees would be leaving that day, and she thought leaving earlier in the week would make the process less "chaotic." Transcript at 14.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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). 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.

Claimant voluntarily quit work because the employer required her to either be vaccinated against COVID-19 in order to continue working, which violated claimant's religious beliefs, or accept an unpaid, indefinite leave of absence. The record shows that claimant faced a situation of such gravity that she had no reasonable alternative but to quit. The order under review concluded that claimant voluntarily quit without good cause because claimant could have requested an indefinite leave of absence, could have "possibly negotiat[ed] with the employer the accommodations to her position that she argued in the hearing could easily be arranged," and because she "quit work prematurely." Order No. 22-UI-183465 at 3. The record does not support these conclusions.

First, the Court of Appeals has held that an unpaid, indefinite leave of absence is not a reasonable alternative to voluntarily leaving 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 unpaid leave of absence available to claimant was therefore not a reasonable alternative to quitting.

Second, claimant testified at hearing that she believed that, for practical purposes, she could have continued to perform her work remotely. Transcript at 23–25. However, the employer’s witness testified that there were certain aspects of claimant’s position which had to be performed in person and that another person had been performing those duties while claimant had been working remotely. Transcript at 21, 22. The employer’s witness also testified that the employer was not allowed to “make an exception” for claimant’s situation. Transcript at 8. When viewed objectively, the record as a whole shows that the employer would not have *permitted* claimant to continue working remotely after October 18, 2021, even if, for practical purposes, claimant might have been able to find a way to do so. Therefore, negotiations with the employer regarding other accommodations would likely have been futile, and not a reasonable alternative to quitting.

Finally, while the order under review was correct in identifying that claimant could have continued to work for the employer for another few days, the fact that claimant quit work “prematurely” is not germane to the analysis, here, of whether she quit work for good cause. Claimant chose her last day of work as October 12, 2021 rather than October 15, 2021 (or any day in between) because of concerns that a large exodus of employees on October 15, 2021 would create “chaos,” and that leaving earlier would alleviate some of that chaos. Such a consideration does not change the *proximate* cause of why claimant quit work, however. The reason that claimant chose to quit work was because getting vaccinated—a requirement for her to continue working—would have violated her religious beliefs. Because, as discussed above, this proximate cause of claimant’s decision to quit supports good cause, the record shows that claimant voluntarily quit work with good cause, and is therefore not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-183465 is set aside, as outlined above.

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

DATE of Service: March 10, 2022

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.

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.

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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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