

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0151

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 15, 2021, 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 October 4, 2020 (decision # 72522). Claimant filed a timely request for hearing. On January 12, 2022, ALJ Lucas conducted a hearing, and on January 19, 2022 issued Order No. 22-UI-184371, reversing decision # 72522 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On January 24, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lincoln County School District employed claimant as a teacher's assistant from 2017 until November 3, 2020.

(2) Claimant had hypothyroidism and adrenal insufficiency. Claimant's medical conditions compromised his immune system and placed him at a higher risk for complications from COVID-19.

(3) In the spring of 2020, following the onset of the COVID-19 pandemic, the employer required their employees, including claimant, to work remotely for the remainder of the school year.

(4) On July 22, 2020, claimant's physician provided claimant with a note regarding his conditions. The note recommended that claimant "limit his dut[ies] to anything that could be remotely executed from home and not put himself in any social situations until the threat of the [corona]virus has passed[.]" Exhibit 1.

(5) In September 2020, the employer informed claimant that beginning in November 2020, he would be required to work in-person and would no longer be allowed to work remotely. The transition back to in-person work concerned claimant because of the risk of exposure to COVID-19 and for complications if he was infected due to his hypothyroidism and adrenal insufficiency.

(6) Claimant requested the employer allow him to continue to work remotely in light of his medical conditions, and provided a copy of his physician's note to the employer when he made this request. The employer offered to allow claimant to work in-person in a room with one student at a time. Claimant believed that under that arrangement he would remain at a heightened risk of exposure to COVID-19 and for complications if he was infected.

(7) Claimant requested a leave of absence rather than return to work in-person but the employer declined to grant claimant a leave of absence. Claimant did not request a transfer to a different position where he could continue working remotely because all of the employer's employees were required to work in-person.

(8) At the end of October 2020, the employer informed claimant that he had to either return to in-person work working in a room with one student at a time beginning in November 2020, or resign. On November 3, 2020, claimant quit working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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 hypothyroidism and adrenal insufficiency, which were each 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.

However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes the following:

* * *

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus[.]

Claimant established good cause for voluntarily leaving work. Claimant quit work because he was concerned about the risk of exposure to and complications from COVID-19 given his long-term impairments and that the employer was requiring him to return to in-person work. Claimant's situation was grave because his hypothyroidism and adrenal insufficiency compromised his immune system and placed him at higher risk of complications from COVID-19. Prior to resigning, claimant requested the employer allow him to continue to work remotely and provided the employer with a copy of his physician's note supporting his request. The employer declined to allow claimant to continue to work from home but offered to allow claimant to work in-person in a room with one student at a time, which claimant chose not to pursue.

The record shows that claimant's choice not to pursue working in person with one student at a time was warranted because, more likely than not, this arrangement would still have placed claimant at a heightened risk for complications from COVID-19 given the immunocompromising effect of claimant's conditions. The record further shows that claimant requested a leave of absence rather than return to work in-person but the employer declined his request. Claimant did not request a transfer to a different position where he could continue working remotely but the record evidence supports that doing so would have been futile because all of the employer's employees were required to work in-person. Claimant therefore had good cause to quit because he established that no reasonable and prudent person in claimant's circumstances with the characteristics and qualities of an individual with hypothyroidism and adrenal insufficiency 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.

Concluding that claimant is not disqualified from receiving benefits based on the work separation is justified for the additional reason that claimant's July 22, 2020 physician's note amounted to advice by a healthcare provider to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus. The physician's note cited claimant's medical conditions and recommended that claimant "limit his dut[ies] to anything that could be remotely executed from home and not put himself in any social situations until the threat of the [corona]virus has passed[.]" Exhibit 1. The note is sufficient evidence to satisfy OED Temporary COVID-19 Rule (1)(c) because its advice that claimant should work remotely and avoid social situations due to the threat of the coronavirus is the equivalent of advising claimant to self-quarantine. Given that claimant quit working for the employer because of their requirement that he work in-person, which conflicted with the advice conveyed in the physician's note, the record supports the conclusion that claimant quit working for the employer because he was unable to work because he had been advised by his physician to self-quarantine due to COVID-19. Accordingly, claimant quit work because of a COVID-19 related situation and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-184371 is affirmed.

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

DATE of Service: March 9, 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.

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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 desisyong ito.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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