

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0298

Reversed & Remanded

PROCEDURAL HISTORY: On December 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct connected with work and was disqualified from receiving unemployment insurance benefits effective September 19, 2021 (decision # 100304). Claimant filed a timely request for hearing. On February 23, 2022, ALJ Blam-Linville conducted a hearing, and on February 25, 2022 issued Order No. 22-UI-187283, affirming decision # 100304 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 19, 2021.¹ On March 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

The parties may offer new information into evidence at the remand hearing, such as the email claimant sent the employer on September 20, 2021. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Beaverton School District # 48 employed claimant as an educator in their independent skills center from September 1, 2014 until September 20, 2021.

(2) In August 2021, the governor of Oregon issued an executive order mandating that all Oregon public school employees get vaccinated against COVID-19 or provide documentation of a medical or religious exception to vaccination by October 18, 2021.

(3) At the end of August 2021, claimant, her daughter, and her son became infected with COVID-19, which they confirmed via a home testing kit claimant obtained from Walgreens.

¹ Order No. 22-UI-187283 stated that it “modified” decision # 100304. Order No. 22-UI-187283 at 3. However, Order No. 22-UI-187283 affirmed decision # 100304 because it did not change the result of decision # 100304, but only the reasoning leading to the result.

(4) On September 4, 2021, the employer's employees were scheduled to return to work for the fall semester. Claimant did not feel comfortable reporting to work in-person because of her positive test result for COVID-19 and the illnesses of her children. Beginning on September 4, 2021, claimant either called in sick or failed to report for her scheduled shifts without calling in first.

(5) Beginning on or about September 4, 2021, claimant inquired of the employer whether she could work remotely and whether she could take paid leave due to her COVID-19 symptoms under the Families First Coronavirus Response Act (FFCRA). Claimant learned from the employer that she would not be permitted to work remotely. She also learned that she had previously exhausted all FFCRA paid leave and only had sufficient paid sick leave to cover absences through September 17, 2021. Claimant had medical leave available to her after September 17, 2021, but it was unpaid.

(6) Claimant was aware of the governor's executive order mandating COVID-19 vaccinations for Oregon public school employees. Claimant was opposed to receiving the COVID-19 vaccine because she believed receiving the vaccine could cause her to contract the virus. She also thought it was unnecessary for her to receive the vaccine because she believed she had gained immunity from COVID-19 as a result of her August 2021 infection.

(7) As of September 20, 2021, claimant's son "continued to be sick" and claimant "needed to take care of him." Transcript at 18. Also on September 20, 2021, the employer's human resources (H.R.) executive called claimant to "clear anything up or answer any questions for her" due to the lack of a substitute teacher for claimant's classroom. Transcript at 10. Although the employer's policy implementing the governor's vaccine mandate was not finalized, the H.R. executive conveyed to claimant the basic features of the policy the employer was devising, including that it would be possible to seek a medical exception to receiving the COVID-19 vaccine. Claimant responded that she did not wish to receive the vaccine and advised that she would send the H.R. executive information she had found that she believed proved the vaccine's adverse side effects.

(8) Later on the morning of September 20, 2021, claimant sent an email to the H.R. executive advising that she "is not in favor of the vaccine and the mandate" and that she was retiring from her position effective immediately. Transcript at 5.

(9) On September 21 or 23, 2021, claimant's son began attending the University of Oregon in Eugene, Oregon. Claimant's son remained ill at that time and claimant "stayed [in] Eugene for a few days at the hotel just to monitor him." Transcript at 20.

(10) On September 30, 2021, the employer finalized their policy implementing the COVID-19 vaccination mandate and announced it to their employees.

CONCLUSIONS AND REASONS: Order No. 22-UI-187283 is set aside, and this matter remanded for further proceedings consistent with this order.

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). 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.

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:

* * *

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine[.]

* * *

The order under review concluded that claimant quit working for the employer because “she was not in favor of obtaining the COVID-19 vaccination” and did not establish good cause to leave work based on this reason. Order No. 22-UI-187283 at 2-3.

It is not clear from the record that claimant quit working for the employer because of her opposition to the COVID-19 vaccination mandate. At hearing, the employer’s witness described claimant’s September 20, 2021 email, which was not made an exhibit or read into the record, as stating that claimant was opposed to the mandate and that she retired for that reason. Transcript at 5. While it is evident from the record that claimant opposed receiving the COVID-19 vaccine, claimant testified that the reason she could not return to work on September 20, 2021 was that her son “continued to be sick” and claimant “needed to take care of him.” Transcript at 18. On remand, the ALJ should ask questions to develop whether claimant quit working for the employer on September 20, 2021 because of the COVID-19 mandate or to care for her son. To the extent the record on remand shows claimant quit work to care for her son, the ALJ should ask questions to determine whether claimant quit work due to a COVID -19 related situation, given that OED Temporary COVID-19 rule (1) remained in effect as of September 20, 2021 and did not expire until after September 25, 2021.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant quit work without good cause, Order No. 22-UI-187283 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-187283 is set aside, and this matter is remanded for further proceedings consistent with this order.

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

DATE of Service: May 10, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-187283 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.