

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0360

Reversed & Remanded

PROCEDURAL HISTORY: On December 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective September 20, 2020 (decision #121921). Claimant filed a timely request for hearing. On February 16, 2022, ALJ Logan conducted a hearing, and on February 24, 2022 issued Order No. 22-UI-187232, reversing decision # 121921 by concluding that claimant voluntarily quit work with good cause, and was not disqualified from receiving benefits based on the work separation. On March 14, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Rise & Shine Agency employed claimant as a community engagement coordinator from August 3, 2020 until September 22, 2020. The employer operated group homes for adults with developmental disabilities. Claimant typically split her working time between the group homes and the employer's office.

(2) When the employer hired claimant, the employer agreed to allow claimant to bring her dog to work with her every day. Had the employer not allowed claimant to bring the dog to work, claimant would not have accepted the position. Claimant's dog experienced "anxiety if left by herself for more than a few hours." Exhibit 1 at 5. Additionally, claimant considered the dog to be a "personal support dog" or "emotional mental health dog." Transcript at 28.

(3) Throughout the course of her employment, claimant was concerned about several of the employer's operational practices, and believed that the employer was violating some of the administrative rules that governed the operation of adult group homes.

(4) On or around September 15, 2020, the employer moved their office to a building which did not allow dogs. Once claimant learned of this, she stopped coming to the office and only worked at the group homes.

(5) On September 22, 2020, the employer asked claimant via email why claimant had not been working in the office. In the ensuing email exchange, claimant told the employer that it was "really hard to work

at the office” without her dog. Exhibit 1 at 5. The employer subsequently told claimant that the employer had not realized that claimant’s being allowed to bring the dog to the office daily was a “contingency for the job,” and stated that the employer “thought [they] were all doing well when [they] were all working in the office together.” Exhibit 1 at 5. Shortly after the email exchange, claimant travelled to the employer’s office and informed the employer that she was resigning.

CONCLUSIONS AND REASONS: Order No. 22-UI-187232 is set aside and this matter remanded for further development of the record.

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 with a permanent or long-term “physical or mental impairment,” as defined at 29 CFR §1630.2(h), 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.

29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Claimant voluntarily quit work following an email exchange with the employer, in which the two discussed claimant’s absence from the office due the new office’s policy of not allowing dogs. At hearing, claimant testified that the issue of bringing her dog to work was not a factor in her decision to quit. Transcript at 32. However, while claimant testified to a number of concerns she had about the employer’s operations that led her to quit, those concerns appeared to have run for the entirety of claimant’s tenure with the employer, and claimant did not identify a specific reason for quitting suddenly and without notice on September 22, 2020. Given this lack of specificity, claimant’s decision to quit almost immediately following the email exchange with the employer that day was, more likely than not, the result of that exchange. Thus, the order under review correctly concluded that claimant voluntarily quit work primarily because she was no longer permitted to bring her dog to the office. Order No. 22-UI-187232 at 3. However, further development of the record is necessary to determine whether this constituted a reason of such gravity that claimant had no reasonable alternative but to quit.

First, although claimant characterized her dog as a “personal support dog” or “emotional mental health dog,” claimant did not offer evidence to show that she had a permanent or long-term physical or mental impairment that necessitated that the dog remain by her side at all times or accompany her to work on a daily basis. On remand, further inquiry should be made as to why claimant needed, or wished, to bring her dog to work with her every day, and why not being able to do so caused her to quit. Additionally, if the record does show that claimant’s dog functioned as a service animal in support of claimant’s physical or mental impairment, the ALJ should inquire as to whether claimant sought reasonable alternatives in the form of concessions from the employer, such as being allowed to work solely at the group homes, requesting an Americans with Disabilities Act (ADA) accommodation, or asking the employer to confirm with the building whether an exception could be made so that claimant could bring her dog into the office.

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 voluntarily quit work with good cause, Order No. 22-UI-187232 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-187232 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 1, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-187232 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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