

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0454

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective February 6, 2022 (decision # 82245). Claimant filed a timely request for hearing. On April 1, 2022, ALJ Wardlow conducted a hearing, and on April 4, 2022 issued Order No. 22-UI-190500, modifying decision # 82245 by concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective January 30, 2022. On April 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Albertina Kerr Centers, Inc. employed claimant as a psychiatric technician from October 6, 2016 to February 5, 2022. Claimant worked in the “subacute” unit at the employer’s facility. Transcript at 7.

(2) On September 9, 2021, claimant left for a scheduled maternity leave. Claimant was scheduled to return to work on February 17, 2022.

(3) In late September 2021, the employer informed their employees that for the employer to comply with an executive order passed by the governor and rules issued by the Oregon Health Authority,¹ employees would be required to be fully vaccinated against COVID-19 by October 18, 2021 or obtain an exception from vaccination based on medical or religious grounds. Claimant received notice of the employer’s expectation. The employer also notified their employees that after October 18, 2021, the employer would not permit unvaccinated employees, including those who had been granted exceptions, to work in certain units, including the subacute unit. When claimant learned of this, she “assumed” that unvaccinated employees who had been granted exceptions would not be permitted to work in any of the employer’s units or programs. Transcript at 17.

¹ See OAR 333-019-1010 (effective September 1, 2021 through January 31, 2022).

(4) While claimant was out on maternity leave, the employer's human resources (HR) department contacted her several times to remind her of the vaccine mandate. On February 3, 2022, claimant responded to the employer's HR department via email to inform them that she was opposed to becoming vaccinated, and to request an exception form. Thereafter, claimant submitted a religious exception form to the employer. The employer granted claimant's request "with the caveat that she would have to transfer to a different program." Transcript at 8. The employer also notified claimant that she could take an additional 12 weeks of unpaid leave to become vaccinated and return to work. At the time, the employer had other positions that claimant could have transferred into that would have allowed her to work while unvaccinated.

(5) On February 5, 2022, claimant notified the employer that she did not intend to become vaccinated against COVID-19. Claimant did not request a transfer to another unit or program or accept the employer's offer of 12 additional weeks of unpaid leave.

(6) On February 7, 2022, the employer notified claimant via email that they would process her termination effective that day. Had claimant either become vaccinated against COVID-19, or transferred to a program or unit that would have allowed her to work while unvaccinated, the employer would have allowed claimant to continue working.

CONCLUSIONS AND REASONS: Claimant voluntarily quit without good cause.

Nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

At hearing, claimant testified that she did not believe that she had quit work, but that she had instead been discharged. Transcript at 12. Claimant did not explicitly inform the employer that she quit, and the employer did not explicitly inform claimant that she had been discharged. However, the record shows that claimant quit.

At the time that claimant separated from work, she had the option to remain employed by becoming vaccinated or transferring to a unit or program that would have allowed her to continue working while unvaccinated. Claimant did not pursue either option, but instead notified the employer that she would not be getting vaccinated. Because claimant had the option to continue working for the employer, albeit on terms she might have found unacceptable, claimant severed the employment relationship when she confirmed with the employer on February 5, 2022 that she would not be getting vaccinated. Therefore, the record shows that claimant could have continued to work for the employer for an additional period of time after February 5, 2022 but was unwilling to do so. Claimant therefore quit work on February 5, 2022.

Voluntary quit. 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.

As discussed above, claimant did not acknowledge that she voluntarily quit working for the employer. Nevertheless, the preponderance of the evidence shows that claimant quit because the employer required her to become vaccinated against COVID-19, which claimant was opposed to on religious grounds. However, claimant has not met her burden to show that this constituted a reason of such gravity that she had no reasonable alternative but to leave work when she did. In particular, while the employer would not have allowed claimant to return to her former position as a psychiatric technician in their subacute unit, the record shows that the employer would have permitted claimant to transfer to another position that did not require her to become vaccinated.

At hearing, claimant explained that she did not request a transfer to another position because of her mistaken assumption that unvaccinated employees who had been granted exceptions would not be permitted to work in any of the employer’s units or programs, and that she “should have paid attention.” Transcript at 17. However, claimant did not suggest that the other available positions would not have been suitable for her, nor did she identify any other reasons for not pursuing a transfer. Claimant therefore did not meet her burden to show that transferring to another position would not have been a reasonable alternative to quitting. Because claimant did not pursue that reasonable alternative, she quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective January 30, 2022.

DECISION: Order No. 22-UI-190500 is affirmed.

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

DATE of Service: June 22, 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 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.

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