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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0499

Order No. 22-UI-190607 – Affirmed ~ Request for Hearing Dismissed
Order No. 22-UI-190765 – Affirmed ~ Disqualification

PROCEDURAL HISTORY: On December 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 22, 2019 (decision # 104901). Also on December 8, 2020, the Department served notice of an administrative decision concluding that claimant was not available for work for the weeks including March 22, 2020 through October 17, 2020 (weeks 13-20 through 42-20) and was therefore not eligible to receive benefits for those weeks and until the reason for the denial had ended (decision # 110712). On December 30, 2020, claimant filed a request for hearing on decision # 104901, which the Department construed as a request for hearing on both decision # 104901 and decision # 110712. On March 22, 2022, the Office of Administrative Hearings (OAH) mailed notices scheduling a hearing on decision # 110712 for April 5, 2022 at 9:30 a.m., and scheduling a hearing on decision # 104901 for April 5, 2022 at 10:45 a.m.

On April 5, 2022 at 9:30 a.m., ALJ Demarest convened a hearing on decision # 110712, but after reviewing claimant's hearing request and asking claimant whether she had intended to request a hearing on decision # 110712, announced his intention to dismiss the appeal and concluded the proceeding without taking evidence. On April 5, 2022 at 10:45 a.m., ALJ Demarest conducted a hearing on decision # 104901, at which the employer failed to appear. On April 6, 2022, ALJ Demarest issued Order No. 22-UI-190607, dismissing claimant's request for hearing on decision # 110712. On April 7, 2022, ALJ Demarest issued Order No. 22-UI-190765, modifying decision # 104901 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective December 15, 2019. On April 21, 2022, claimant filed applications for review of Orders No. 22-UI-190607 and 22-UI-190765 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-190607 and 22-UI-190765. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0499 and 2022-EAB-0498).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the December 30, 2020 request for hearing claimant filed in this case, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) Sisters of the Holy Names of Jesus and Mary employed claimant as program director from December 2014 until December 18, 2019. Claimant was a registered nurse and, as program director, oversaw the health and wellness of the women who were a part of the employer's organization throughout Oregon.

(2) The women whom claimant oversaw the health and wellness of were primarily elderly and required assisted living or special care. Many of these women were housed in a particular nursing home that had a relationship with the employer's ministries. Over the course of claimant's employment, claimant noticed that the quality of the care the women received from the nursing home declined significantly.

(3) In October 2019, claimant learned of a "serious care issue[]" at the nursing home involving "severe medication errors." Transcript at 23. Claimant, who was a mandatory reporter and required under state law to report abuse or neglect of seniors, made a report regarding the incident to a local agency that investigates reports of senior abuse. Ten days later, claimant learned that a woman had fallen down a flight of stairs in the nursing home and suffered a head injury but was not hospitalized. Claimant considered the nursing home's failure to hospitalize the woman to be neglectful, and made another report to the agency that investigates senior abuse.

(4) Shortly after claimant made the October 2019 reports advising of suspected senior abuse or neglect, she and a social worker on her staff sent a letter to the employer's leadership team informing them of the reports and requesting a meeting to discuss the diminished quality of care at the nursing home. Thereafter, the employer's leadership team held a couple of meetings with claimant.

(5) Claimant found the tone of the leadership team in the meetings to be critical of her decision to make the reports. Claimant was dissatisfied with the leadership team's reaction in the meetings and felt that her professional integrity was compromised because her letter was not met "with the level of depth and concern that there should have been[.]" Transcript at 15. Claimant also thought the meetings were punitive toward her in nature, although the leadership team "never actually took any punitive or retaliatory kinds of actions" against claimant. Transcript at 19.

(6) The leadership team's tone in the meetings caused claimant to reassess continuing to work for the employer. Claimant had been carrying on part time self-employment activities for several years. Claimant decided to quit working for the employer and pursue her self-employment activities full time. On December 18, 2019, claimant voluntarily quit working for the employer.

CONCLUSIONS AND REASONS: The dismissal of claimant's appeal of decision # 110712 is affirmed. Claimant voluntarily left work without good cause.

Order No. 22-UI-190607 Dismissal of Hearing Request. For a party to make a valid request for hearing, they must "specifically request[] a hearing or otherwise express[] a present intent to appeal[.]" OAR 471-040-0005(1) (effective July 15, 2018). *See also Kroetch v. Employment Department*, 289 Or App 291, 409 P3d 60 (2017) (to be a valid request for hearing, a submission must include some indication that the party is aware the underlying decision exists and that the party wants to challenge it).

The hearing request claimant submitted on December 30, 2020 referenced only decision # 104901, the administrative decision that concluded claimant had voluntarily quit work without good cause. The submission included a two-page narrative explaining why claimant disagreed with decision # 104901, and included a copy of decision # 104901, which the cover page of the submission referred to as the "decision being appealed." EAB Exhibit 1 at 1-5. Claimant's hearing request submission made no mention of decision # 110712, the administrative decision that concluded that claimant was not available for work. At the hearing convened on April 5, 2022 at 9:30 a.m., when asked whether she intended to request a hearing on decision # 110712, claimant stated "as far as I could tell from the paperwork that I got is that the [voluntary quit] was the . . . only issue on the table because that was why I was denied benefits." Order No. 22-UI-190607 Audio Record at 7:55 to 8:10. Claimant also stated that "not being available for work, see, this is part of the thing, I am self-employed. So after I left the Sisters, I left the Sisters and focused my energy on my own self-employment. So I wasn't available for work because I was self-employed." Order No. 22-UI-190607 Audio Record at 9:26 to 9:41.

The foregoing shows that claimant intended only to request a hearing on decision # 104901 when she submitted her December 30, 2020 request for hearing. Further, at the time claimant made the hearing request, there is no indication that claimant wished to challenge decision # 110712 because claimant was not aware of decision # 110712 and, in any event, did not disagree with its conclusion that she was not available for work. Rather, claimant agreed that after her separation from the employer she was unavailable for work because she was self-employed. Therefore, claimant did not specifically request a hearing on decision # 110712 or otherwise express a present intent to appeal it and dismissal of the request for hearing as to decision # 110712 was warranted.

Order No. 22-UI-190765 Voluntary Leaving. 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) (December 23, 2018). "[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. Under OAR 471-030-0038(5)(b)(G), leaving work without good cause includes "[l]eaving work for self employment."

Claimant did not meet her burden to prove that she had good cause to leave work when she did. The record shows that claimant was dissatisfied with the employer's reaction in the meetings that occurred after she made the October 2019 reports advising of suspected senior abuse and felt the employer's leadership team was critical of her decision to make the reports. While the incidents at the nursing home were concerning and claimant may have been justified in feeling disappointed by the employer's

response, claimant did not establish that the employer's treatment of her in the meetings created a situation of such gravity that a reasonable and prudent person of normal sensitivity would have no reasonable alternative but to leave work. Claimant felt that the employer's reaction in the meetings had compromised her professional integrity, but there is no evidence that the employer interfered in any way with claimant's mandatory reporting obligations and the employer did grant the meetings claimant requested in her letter even if the reaction claimant received in the meetings was not what she expected. Claimant also considered the meetings to be punitive toward her in nature but candidly testified at hearing that the leadership team "never actually took any punitive or retaliatory kinds of actions" against claimant in the meetings. Transcript at 19. The record therefore shows that when claimant voluntarily quit working for the employer, she did not face a situation of such gravity that she had no reasonable alternative but to leave work. Accordingly, claimant quit work without good cause.

Moreover, to the extent claimant quit working for the employer to pursue her self-employment activities full time, claimant quit work without good cause because, under OAR 471-030-0038(5)(b)(G), "[l]eaving work for self employment" constitutes leaving work without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective December 15, 2019.

DECISION: Orders No. 22-UI-190607 and 22-UI-190765 are affirmed.

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

DATE of Service: July 8, 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.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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