

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0549

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 30, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective March 6, 2022 (decision # 101226). Claimant filed a timely request for hearing. On April 26, 2022, ALJ Demarest conducted a hearing, and on April 28, 2022 issued Order No. 22-UI-192477, affirming decision # 101226. On May 9, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Avamere Court at Keizer Memory Care employed claimant as the executive director of their facility from April 1, 2021 until March 8, 2022.

(2) Prior to working for the employer, claimant was diagnosed with high blood pressure, diabetes, and anxiety disorder. These conditions persisted while claimant worked for the employer.

(3) For the last several months of his employment, the employer's facility was short-staffed and lacked a residential care coordinator and registered nurse. Although claimant was not clinically trained, many of the duties that would otherwise be handled by those two positions nevertheless fell to claimant to complete. As a result, claimant typically worked about 14 hours per day. The demands of the position typically required claimant to be available on-call 24 hours a day, seven days a week, even if claimant was on vacation or out sick. Claimant requested help for the excess workload, but the employer did not give claimant any help.

(4) Claimant's work hours and the demands of his position caused claimant to experience significant stress, which exacerbated his medical conditions and caused claimant to feel like he "was going to end up dying." Transcript at 9. In response, claimant's supervisor told claimant that he should work fewer hours. However, the extra work that claimant performed needed to be completed by somebody, and if claimant did not do so, he "still ended up being blamed. . . for things not getting done." Transcript at 10.

(5) Towards the end of his employment, claimant sought advice from his physician because claimant's blood pressure had risen to dangerous levels. Claimant's physician advised claimant that he should "really look for another job" for the sake of his health. Transcript at 17.

(6) On February 7, 2022, claimant was sick with COVID-19, and texted the facility's business office manager to notify her that he would be out for the day. The business office manager asked claimant if he would like to use paid time off (PTO) for his absence. Claimant responded that he would not use PTO but would make up the time instead. On February 8, 2022, the business office manager sent claimant an email again asking if he would like to use PTO to cover the absence. Claimant responded by stating, in relevant part, "I don't want to use my PTO because people still call me, still text me, emails that need my response, reports and things that need to be turned in and being asked to take PTO I think is highly unfair and wrong for that matter." Exhibit 1 at 3. Claimant concluded the email by giving notice that he intended to voluntarily quit effective February 22, 2022.

(7) After claimant tendered his resignation, claimant's supervisor asked him if he would be willing to extend his notice period to March 8, 2022, and claimant agreed to do so. Claimant later requested to rescind his resignation when he learned that the employer had filled both the residential care coordinator and registered nurse positions, but his supervisor did not allow him to do so. Claimant resigned on March 8, 2022.

(8) Prior to quitting, claimant did not seek a leave of absence. At the time that he gave his notice, claimant would have been eligible to take medical leave under the Oregon Family Leave Act (OFLA), but most, if not all, of any such leave would have been unpaid as claimant had little or no PTO remaining.

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

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). Claimant had diabetes, high blood pressure, and anxiety disorder, permanent or long-term "physical or mental impairment[s]" 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.

Claimant gave notice of his intent to resign on February 8, 2022, following an exchange with the business office manager in which she asked him if he would be using PTO to cover an absence. While this conversation triggered claimant's decision to quit, it is clear from the record that, as the order under review noted, the proximate cause of claimant's decision to quit was that he was "overwhelmed and

stressed by the job.” Order No. 22-UI-192477 at 2. Therefore, claimant’s stress and feelings of being overwhelmed are the focus of the analysis of whether claimant quit work¹ with good cause.

The record shows that the stress of the job, largely caused by overwork, exacerbated claimant’s underlying medical conditions, including raising his high blood pressure to dangerous levels. The danger that the work-related stress posed to claimant’s health was a grave reason for quitting, particularly in light of claimant’s physician’s advice that he should look for other work. Further, the record shows that claimant had no reasonable alternative but to quit.

The order under review concluded that claimant failed to pursue reasonable alternatives such as limiting his work hours, taking medical leave, and “continuing to work by seeking to withdraw his resignation.” The record does not support these conclusions. The record does suggest that claimant might have been able to reduce his stress, and manage his medical conditions better, if he worked fewer hours. However, claimant worked as many hours as he did because the facility was short-staffed and it fell to him as the executive director of the residential care facility to handle duties that would have otherwise been completed by employees in other positions, including complying with State regulations. Further, if those duties were not completed, the employer would hold claimant responsible and likely subject him to discipline. Under such circumstances, working fewer hours was not a reasonable alternative to quitting.

Additionally, while claimant did not request a leave of absence prior to quitting, the record does not show that doing so would have constituted a reasonable alternative. First, as the excessive amount of work that fell to claimant was the factor that exacerbated his health conditions, temporarily removing claimant from work would not have improved claimant’s situation because during his leave, more work would accumulate and upon his return, claimant would be required to do an even greater amount of work than before. Second, as claimant had little or no PTO remaining at the time he quit, any such leave of absence would have been largely, if not entirely, unpaid, and therefore not a reasonable alternative to quitting. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that “a protracted, unpaid leave of absence is not a ‘reasonable alternative’ to leaving work and being unemployed; indeed it is not an alternative at all”); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension).

Finally, even if the employer *had* allowed claimant to rescind his resignation, the Court of Appeals has held that where an individual faces a grave situation, continuing to work until the individual has found other work is not a reasonable alternative to quitting work. *See Hill v. Employment Dep’t.*, 238 Or App 330, 243 P3d 78 (2010); *see accord Warkentin v. Employment Dep’t.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep’t.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep’t.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep’t.*, 256 Or App 682, 303 P3d 957 (2013).

¹ Although claimant later attempted to rescind his resignation notice, where a claimant gives notice of their resignation and later attempts to rescind the resignation, and the employer refuses to allow rescission, the work separation remains a voluntary leaving. *Couns v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999). Therefore, the record shows that claimant voluntarily quit work.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-192477 is set aside, as outlined above.

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

DATE of Service: July 27, 2022

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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.