

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0587

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 25, 2022, 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 February 13, 2022 (decision # 143537). Claimant filed a timely request for hearing. On May 9, 2022, ALJ Frank conducted a hearing, and on May 17, 2022 issued Order No. 22-UI-193966, reversing decision # 143537 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On May 19, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Salem Pain & Spine Specialists employed claimant as an authorization specialist from August 13, 2013 until December 2, 2021. The employer operated a clinic that specialized in treating pain and spinal conditions.

(2) Prior to her work separation, five of claimant's coworkers tested positive for COVID-19. Each of these employees experienced minimal effects from the virus.

(3) In 2016 or 2017, claimant was diagnosed with pulmonary bronchial inflammation. Claimant's symptoms included a chronic cough, which she was prescribed medication to treat. The employer had some understanding of claimant's condition. Claimant's condition also left her at higher risk for contracting COVID-19. At the time of her work separation, claimant was 65 years old.

(4) Prior to March 2020, the employer agreed to allow claimant to work remotely from her home due, in part, to concerns claimant had over her susceptibility to COVID-19. The employer struggled to keep up with paperwork during the COVID-19 pandemic, so claimant would occasionally come to the office on weekends, when the office was empty and there was a reduced risk of COVID-19 exposure, to help the employer catch up with the paperwork.

(5) On September 17, 2021, the employer emailed claimant and informed her that beginning March 1, 2022, the employer would expect claimant to work from the office two days per week. Claimant

responded to the notification by stating that “staying safe from exposure to the covid” and completing “twice the workload” had been benefits that she and the employer had derived from her working remotely. Exhibit 1 at 8. Claimant also conveyed her hope that “[b]y March 2022, . . . the covid pandemic will get turned around in the right direction so that we can feel safe with our exposure to patients that enter our office.” Exhibit 1 at 8. The employer’s CEO responded to claimant by agreeing with her that her remote work had been beneficial to both claimant and the employer. However, the employer further stated that claimant’s remote work had created a staffing strain for the employer and therefore by January 3, 2022 claimant would need to decide whether she would return to the office two days a week beginning March 1, 2022 or “move forward with retirement.” Exhibit 1 at 7.

(6) On December 2, 2021, the employer’s CEO called claimant to inform her that, due to the employer’s staffing issues, the employer had decided to move her timeline for returning to the office two days per week to the week beginning December 5, 2022. The CEO gave claimant the option to comply with the two office days a week requirement or accept a \$10,000 severance payment. The CEO recognized that claimant was “afraid of COVID,” and he “wasn’t . . . gonna push her” for a decision at that moment. Transcript at 20. The CEO told claimant to think about the decision over the weekend and to let him know her answer on December 6, 2022.

(7) On December 3, 2021, claimant called the CEO and told him that she would not be returning to the office two days a week because she did not believe it was worth the risk of exposing herself to COVID-19. The employer paid claimant a \$15,000 severance payment after deciding to increase the severance amount. Claimant did not work for the employer again.

CONCLUSION AND REASONS: Claimant voluntarily quit work with 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).

The order under review concluded that the nature of claimant’s work separation was a discharge because the employer “informed claimant that continuing work was no longer available and because “claimant neither tendered her resignation notice nor communicated an unwillingness to remain unemployed.” Order No. 22-UI-193966 at 2-3. The record does not support these conclusions.

The record shows that during their phone conversation on December 2, 2021, the employer’s CEO informed claimant that she would be required to work in the office two days per week as of the week beginning December 5, 2021 and that if she chose not to comply with this requirement, the employer would provide her a severance payment. As such, the employer placed claimant on notice that she could have continued to work for the employer for an additional period of time, as long as she was willing to comply with the hybrid work requirement. On December 3, 2021, claimant informed the employer that she was not willing to comply with the hybrid work requirement. Therefore, claimant was not willing to work for the employer for an additional period of time under the conditions the employer presented. Because claimant was not willing to continue working for the employer for an additional period of time,

despite the fact that the employer was willing to allow her to do so, the record shows that the nature of the work separation was a voluntary leaving that occurred on December 3, 2021.

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) (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 pulmonary bronchial inflammation, a permanent or long-term “physical or mental impairment” 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 quit work on December 3, 2021 because she determined that returning to work in the employer’s office was not worth the risk to her health posed by COVID-19. The record shows that claimant’s age, the chronic nature of her medical condition, and the fact that the employer was in the business of treating medical patients placed her at a heightened risk for contracting COVID-19. Furthermore, the record shows that several of claimant’s coworkers contracted COVID-19. Thus, claimant’s circumstances were grave. A reasonable and prudent person who was at high risk of complications from COVID-19 due to a respiratory disorder, and who was required to work in an environment where they had a high risk of contracting COVID-19, would have left work under such circumstances.

Claimant had no reasonable alternative but to leave work when she did. First, the record shows that claimant attempted to convince the employer to allow her to continue working from home full time, but the employer would not allow her to do so. Furthermore, the record shows that had claimant approached the employer about a medical accommodation allowing claimant to continue working full-time from her home due to her condition, her attempts would have been, more likely than not, futile. Specifically, the record shows that at the time the employer informed claimant that she would need to return to the office two days a week, the employer was *already* aware of claimant’s medical condition, her fears about contracting COVID-19, and her desire to continue working from home. Thus, the preponderance of the evidence suggests that had a medical accommodation been a reasonable alternative for claimant to pursue, the employer would have already offered it as an option to claimant. This conclusion is supported by the CEO’s testimony at hearing. When asked what the employer would have done if provided medical documentation by claimant recommending that she continue remote work, the CEO responded by noting that he would have run the paperwork by a medical professional but did not indicate that the employer would have been willing to offer claimant an accommodation. Transcript at 21-22. As such, the record shows that claimant had no reasonable alternative but to leave work when she did.

For these reasons, claimant voluntarily quit work with good cause and therefore is not disqualified from receiving unemployment insurance benefits based upon the work separation.

DECISION: Order No. 22-UI-193966 is affirmed.

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

DATE of Service: August 9, 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 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.

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