

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0677

Reversed & Remanded

PROCEDURAL HISTORY: On August 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 18, 2021 (decision # 82549). Claimant filed a timely request for hearing. On May 11, 2022, ALJ Frank conducted a hearing at which the employer failed to appear, and on May 19, 2022 issued Order No. 22-UI-194088, affirming decision # 82549. On June 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2).

The parties may offer new information such as written argument into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Noel's Market Inc. employed claimant from 1986 until July 21, 2021. Claimant had most recently been employed as their manager.

(2) Claimant has a hearing impairment.

(3) Prior to 2021, claimant and her sisters inherited a 50 percent stake of Noel's Market, Inc. In or around early 2021, another individual extended an offer to claimant and her three sisters for their

respective shares of the business. Each of claimant's sisters accepted this offer and claimant did not. Claimant was then the only remaining minority shareholder.

(4) Following the sale, claimant remained a co-manager of Noel's Market Inc. In this role, she occasionally needed to perform the duties of a cashier.

(5) At a shareholders' meeting on July 1, 2021, claimant's co-manager was appointed as the employer's sole manager. At this meeting, it was also decided that the employer would offer claimant a position as a cashier. This position came with a decreased salary, hours, and benefits, but the details of those reductions were not specified.

(6) Claimant did not accept the cashier position and on July 21, 2021, quit working for the employer.

CONCLUSIONS AND REASONS: Order No. 22-UI-194088 is reversed and this matter is 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). Claimant had a hearing impairment, 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.

The order under review concluded that claimant left work without good cause "because she was dissatisfied with the working conditions." Order No. 22-UI-194088 at 3. The specific change in working conditions included a demotion, which resulted in a change in job duties as well as a reduction in pay, hours, and benefits. The order under review concludes that the change in job duties did not create a situation of such gravity that a reasonable and prudent person would leave work. The record supports the conclusion that claimant voluntarily left because she was dissatisfied with working conditions after she was removed from the co-manager position and offered a cashier position. However, the record is insufficient to determine whether the change in working conditions created a situation of such gravity that a reasonable and prudent person with claimant's hearing impairment would leave work.

On remand, the record must be developed to show which specific changes in claimant's working conditions prompted claimant to quit, and whether any of those changes created a situation of such gravity for claimant that she had no reasonable alternative but to quit when she did. As a cashier, claimant's hours and pay rate would both be reduced; however, claimant testified at hearing that the change in her hours or pay rate did not cause her to quit. Audio Record at 29:35 to 30:25. Claimant's benefits were also reduced as she received fewer weeks of paid vacation (five compared to ten). Exhibit 1 at 7. The record must be developed to show if or how the change in claimant's benefits influenced claimant's decision to quit.

The record is also unclear about whether the change in duties was the primary motivation for claimant to quit, and if so, why that change motivated claimant to quit. Although claimant asserts that she is “deaf,” and the hearing proceedings showed that claimant has a hearing impairment, the order under review did not apply the modified standard for a claimant with an impairment. Exhibit 1 at 3. The record must be developed to clarify the extent of claimant’s impairment and whether, given claimant’s impairment, the change in her duties constituted good cause to quit. Claimant previously worked as a manager of the employer’s retail store and the new position was a cashier position. At hearing, claimant testified that she occasionally performed the duties of a cashier while she was the manager. Audio Record at 39:30 to 40:20. The record is unclear regarding the extent claimant previously performed cashier duties, the frequency she performed them, and whether her hearing impairment impacts her ability to perform the duties of a cashier. The record is also unclear as to what extent, if any, claimant’s hearing impairment contributed to claimant’s decision to quit when she was reassigned the role of cashier.

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. OAR 471-030-0038(4). The record is insufficient to conclude whether claimant quit work with good cause. On remand, the ALJ should develop the record so it is possible to determine whether the change in job duties created a situation of such gravity that no reasonable and prudent individual, with claimant’s hearing impairment, would continue to work for the employer. Specifically, the ALJ should inquire into the nature to claimant’s hearing impairment, the extent to which claimant had previously performed the duties of a cashier, and the extent to which claimant’s impairment affected her ability to perform these duties.

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-194088 is reversed, and this matter is remanded for further development of the record.

DECISION: Order No. 22-UI-194088 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: September 6, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-194088 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 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 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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