

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0684

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 4, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective April 10, 2022 (decision # 113418). Claimant filed a timely request for hearing. On June 2, 2022, ALJ Demarest conducted a hearing, and on June 3, 2022 issued Order No. 22-UI-195280, affirming decision # 113418. On June 14, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Courtesy Ford employed claimant as an office administrator from about July 2021 until April 12, 2022. Claimant worked full time for the employer.

(2) During all times relevant to this decision, claimant suffered from mixed connective tissue disease, an autoimmune disorder. As a result, claimant tended to get sick more easily than other people. Claimant also needed to attend regular medical appointments to manage her condition. Additionally, claimant suffered from chronic migraines. Although claimant managed her migraines with medication, a migraine of sufficient severity could still keep her from being able to work until it resolved.

(3) Due to her chronic health conditions, as well as a COVID-19 infection, claimant missed work on several occasions during the course of her employment. During the last three months of claimant's employment, claimant was out sick for at least two days per month. The employer was generally aware that claimant had chronic health conditions that caused her to miss work.

(4) On or around March 30, 2022, claimant's manager met with claimant to discuss her concerns about claimant's frequent absences. In the meeting, the manager told claimant that unless claimant stopped missing work, claimant would need to produce a doctor's note each time she was absent, or the manager would cut back claimant's hours so that she only worked part time. After the manager explained this to claimant, claimant notified the manager that she intended to resign effective April 14, 2022. Claimant decided to resign because she knew that her health conditions would continue to cause her to miss work.

(5) Prior to giving her notice of resignation, claimant did not speak to the employer's human resources department about her absences or her medical conditions. Claimant was not eligible for leave under the federal Family Medical Leave Act (FMLA), but might have been eligible for leave under the Oregon Family Leave Act (OFLA).

(6) Between March 31, 2022 and April 12, 2022, claimant continued to work for the employer. However, the employer reduced claimant's duties during that period, as they were shifting claimant's responsibilities to another employee. On April 12, 2022, claimant quit working for the employer because the employer had reduced her duties, and she felt that the employer no longer needed her.

CONCLUSIONS AND REASONS: Claimant quit work without good cause within 15 days of a planned quit with good cause, and therefore is not disqualified from, or ineligible for benefits, based on the work separation.

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 mixed connective tissue disease and chronic migraines, permanent or long-term "physical or mental impairments" 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.

However, ORS 657.176(6) states:

For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The separation would be for reasons that constitute good cause; (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving, then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

The order under review concluded that claimant quit work without good cause within 15 days of a planned quit without good cause. Order No. 22-UI-195280 at 2-3. The record shows that claimant quit work without good cause. However, the record also shows that claimant's planned quit would have been with good cause.

Actual quit. Claimant quit because the employer had reduced her duties in the lead-up to her planned quit, and claimant therefore felt that the employer no longer needed her. While claimant's concern was understandable, a reasonable and prudent person would not have voluntarily quit working early simply because the employer had started to transition their duties to other employees in anticipation of the individual's impending resignation. Therefore, claimant did not face a situation of such gravity that she had no reasonable alternative but to quit on April 12, 2022, and her decision to quit that day was without good cause.

Planned quit. However, claimant's planned quit would have been with good cause. Claimant gave notice of her intent to quit on April 14, 2022 after her manager explained to her that unless claimant stopped missing work, claimant would be required to produce a doctor's note every time she was absent, or the manager would cut claimant's hours back to part-time. The record shows that claimant gave notice of her intent to quit for a grave reason. Claimant suffered from an autoimmune disorder and chronic migraines that caused her to miss work somewhat regularly due to the conditions themselves and regularly-scheduled medical appointments. The employer took issue with claimant's regular absences, and told her that if the absences continued, she would be required to bring in a doctor's note for each absence or would face a reduction in her hours.

It is not clear from the record how either of these options would have benefitted the employer. Doctors' notes would not make up for any loss in productivity due to claimant's absences. Meanwhile, cutting claimant's hours would likely keep claimant from working when she was well without mitigating the impact on productivity caused by her unpredictable absences due to illness. Thus, it is reasonable to infer from the record that the employer essentially was requiring claimant to refrain from being sick or work when sick, which was unreasonable, or accept one of two retaliatory measures that benefitted neither party. Nor does the record show that the employer would have paid claimant for the costs associated with obtaining a doctor's note each time she was absent from work. It is unlawful for any employer to require an employee to pay for the cost of a medical examination or the cost of providing a health certificate as a condition of continued employment. ORS 659A.306(1). Under the circumstances, a reasonable and prudent person with the conditions from which claimant suffered would have quit work if there were no reasonable alternative.

The record shows that claimant had no reasonable alternative but to quit. At hearing, the employer's human resources associate testified that claimant might have been eligible for OFLA leave. Transcript at 20. However, the record does not show that the employer ever communicated this to claimant, despite having spoken to her about her absences and being aware that they were caused by her chronic health conditions. Nor does the record show that claimant was actually aware that OFLA leave could have been available to her. Given the limited choices that claimant's manager offered her during the meeting in late March 2022, it would not have been reasonable for claimant to conclude that seeking OFLA leave was an option. Instead, it was reasonable for claimant to conclude that any such options would have been futile. The record therefore shows that claimant's situation was of such gravity that she had no reasonable alternative but to quit. Had claimant voluntarily quit work on April 14, 2022 as planned, she would have quit with good cause.

Claimant therefore quit without good cause within 15 days of her planned quit with good cause. ORS 657.176(6) therefore applies to claimant's circumstances, such that the separation from work is adjudicated as if the actual quit had not occurred and the planned quit had occurred. Claimant therefore

is not disqualified from receiving benefits, and would be ineligible for benefits only for the period including the week in which the actual quit occurred through the week prior to the week of the planned quit. Here, however, the actual quit occurred during the same week as the planned quit. In such circumstances, in which the ineligibility period ends before it begins, there is no ineligibility period. Claimant therefore is not ineligible for benefits because of the actual quit.

DECISION: Order No. 22-UI-195280 is set aside, as outlined above.

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

DATE of Service: September 20, 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.

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.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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