

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0776

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 24, 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 24, 2022 (decision # 73508). Claimant filed a timely request for hearing. On June 27, 2022, ALJ Frank conducted a hearing, and on June 29, 2022 issued Order No. 22-UI-197165, affirming decision # 73508. On July 11, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching its decision. Claimant's written argument alleged that the hearing proceedings were unfair because the ALJ did not call claimant's witness to testify. However, OAR 471-040-0025(5) (August 1, 2004) states, in relevant part, that, "Irrelevant, immaterial, or unduly repetitious evidence shall be excluded," and that "erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party." Claimant's written argument states his witness would have testified to claimant's lack of lunch and other breaks, and that the employer was aware of this. On these issues, however, EAB finds claimant's unrefuted testimony to the same facts credible, and the witness's testimony therefore would have been unduly repetitious and therefore immaterial. Claimant therefore failed to show that the ALJ erred in not calling the witness. Further, even if the ALJ had erred, claimant has not shown that his rights were substantially prejudiced.

FINDINGS OF FACT: (1) Fred Meyer Stores Inc. employed claimant from March 30, 2020 to April 26, 2022. Claimant was the person in charge (PIC) during his shifts.

(2) Claimant had arthritis and Attention Deficit Disorder (ADD). The employer was aware of these conditions. Claimant did not obtain a doctor's note or otherwise seek any modification of his work duties because of these conditions.

(3) Claimant sometimes took his lunch and/or other breaks a half hour late, or did not take a lunch and/or other breaks, because of his heavy workload. As the PIC during his shifts, one of claimant's duties was to schedule lunch and other breaks for himself and other employees. The employer did not order claimant to take breaks late or not take them.

(4) Claimant informed his manager that he was not always taking lunch and/or other breaks (or was taking them late). Claimant occasionally mentioned not taking a break around a member of human resources, but human resources was not aware this was an ongoing issue and claimant never made a formal complaint.

(5) The physical nature of claimant's job duties aggravated his arthritis. Claimant did not seek an accommodation, medical leave, or a doctor's recommendation regarding the issue. Claimant applied for a different position at the company, but did not obtain it. Claimant never requested a transfer to a less physically demanding position.

(6) In mid-April 2022, claimant notified the employer in writing that he was quitting effective April 28, 2022, but the notice did not state why claimant was quitting. When claimant submitted the resignation notice he told the employer that he needed some time to let his body recover from ongoing physical issues. The employer responded by offering claimant a leave of absence, but claimant refused.

CONCLUSIONS AND REASONS: Claimant quit work without 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 arthritis and ADD, 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.

Claimant has not proven that he faced a situation of such gravity that he had no reasonable alternative but to leave work. Claimant testified that the primary reason he quit was that he sometimes was not given, or untimely given, lunch and other break periods. Audio Recording 12:08 to 12:25. Concerning his breaks being late, claimant has only shown that his breaks were up to 30 minutes late. Exhibit 2 at 1. As such, claimant has failed to show that these late break periods were unlawful or otherwise created a grave situation.¹

¹ See <https://www.oregon.gov/boli/workers/Pages/meals-and-breaks.aspx> which states in relevant part that, "If the work period is more than seven hours, the meal period is to be taken after the third hour worked and prior to the commencement sixth hour worked," and that, "Insofar as feasible considering the nature and circumstances of the work, rest periods are to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment."

As for claimant's assertion that he was not given breaks, the record instead reflects that he was not taking his breaks. As the PIC, part of claimant's responsibility was scheduling and taking breaks. Audio recording at 25:30 to 25:50. The record does not show that the employer prevented, interfered, or otherwise did not allow claimant to take his required breaks. The record instead shows claimant did not take these breaks because of heavy workload demands. It therefore remained within claimant's ability to take the required breaks.

Although not taking breaks because of heavy workload demands could still be a grave situation, claimant had reasonable alternatives he did not pursue. One reasonable alternative that claimant could have pursued would be to file a complaint with human resources. While, claimant testified that he had mentioned not taking breaks to human resources, he never filed a complaint or had a formal discussion with them about not taking lunch or other break periods. The employer's witness testified that though he had heard claimant mention not taking breaks in passing, he believed this was within claimant's power to address as the person in charge. Audio Recording 25:10 to 25:43. The employer's witness further testified that if claimant had made a complaint, they would have worked with claimant's manager to ensure that claimant took the requisite break periods. Audio Recording 26:42 to 27:13. On this record, claimant had a reasonable alternative to quitting, namely filing a complaint about not being able to take breaks.

To the extent that the lack of lunch and other breaks exacerbated claimant's underlying conditions, claimant had a number of alternatives that he did not pursue. First, claimant could have pursued obtaining a doctor's note or other recommendation to modify his job duties. Claimant did not seek to have his job duties modified in anyway or seek any kind of medical treatment. Alternatively, claimant could have sought a transfer to a less physically demanding position with the company. Lastly, claimant could have pursued a leave of absence. When claimant provided his notice of quitting, he told the employer that it was because of underlying medical conditions. Audio Recording at 28:36 to 29:12. The employer responded by offering claimant a leave of absence and claimant declined. Each of these alternatives would have allowed claimant to address his underlying medical conditions, while still working for the employer.

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 24, 2022.

DECISION: Order No. 22-UI-197165 is affirmed.

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

DATE of Service: October 11, 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.

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.