EO: 200
BYE: 202315

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0811

Reversed & Remanded

PROCEDURAL HISTORY: On May 10, 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 April 10, 2022 (decision # 164921). Claimant filed a timely request for hearing. On June 29, 2022, ALJ Blam-Linville conducted a hearing, and on June 30, 2022 issued Order No. 22-UI-197257, concluding that was discharged, but not for misconduct, and claimant was not disqualified from receiving benefits based on the work separation. On July 19, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Kush Cart employed claimant from March 2020 until April 12, 2022. Claimant's work for the employer involved working on a variety of special projects, with an emphasis on human resources (H.R.) work.

(2) Over the course of claimant's employment, she typically worked about 26 hours per week in the office and six to ten hours per week remote. Claimant had two children, ages seven and nine, both of whom were autistic and needed special care. Claimant believed the maximum she could work in the office for the employer was 26 hours per week because of her children's needs.

(3) On March 23, 2022, claimant held a meeting with an employee about that employee's customer care training. The employee's training was being conducted by one of the employer's co-owners. In the meeting, the employee asked claimant about her customer care training, and claimant answered that the co-owner who was training the employee had not allowed claimant to train in that area. The meeting was

audio-recorded and, subsequently, a different co-owner listened to claimant's comment and thought claimant was disparaging the co-owner to the employee.

(4) On April 12, 2022, claimant met with the co-owner who had listened to claimant's comment. The co-owner expressed displeasure with claimant's comment and presented claimant with two options regarding her employment. The first option was for claimant to continue working for the employer but in a non-mentoring operational role, like driving, that would require claimant to be in the office 30 hours per week. The second option was that claimant could "part ways" with the employer by terminating her employment and receiving a severance package. Transcript at 24.

(5) Claimant believed she could not accept the first option because the operational role she would likely be moved into had "10-plus hour days" and there was "one day a week, where [claimant] did not have the ability . . . to make that work[.]" Transcript at 8. Claimant also believed that she could not place her children in childcare for the additional four hours per week that she would have to in the office if she chose the first option. Claimant earned a salary that was the equivalent of $21 or $23 per hour. The cost of childcare for claimant's children was $25 per hour. Claimant believed that she could not work the additional four hours per week in the office because putting her children in childcare would result in her "essentially breaking even." Transcript at 8.

(6) Because claimant thought the first option was not acceptable, she chose the second option presented by the co-owner and terminated her employment effective April 12, 2022.

(7) Claimant's husband, who was the father of her children, also worked for the employer. At some point during claimant's employment for the employer, she and her husband separated. Although there was not a restraining order in place against the husband, the husband had subjected claimant to domestic violence. This "factor[ed] in" to claimant's decision to terminate her employment by choosing the second option presented by the co-owner. Transcript at 14.

(8) Prior to the April 12, 2022 meeting, the co-owner told claimant to cancel her other meeting that day and to bring her laptop and building access key to her meeting with him. The co-owner told claimant to cancel her other meeting because he thought the meeting with him took priority. The co-owner told claimant to bring her laptop and key because if she chose the second option and ended her employment, she could turn in those items at the same time.

CONCLUSIONS AND REASONS: Order No. 22-UI-197257 is set aside, and this matter remanded for further proceedings consistent with this order.

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 claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits. Order No. 22-UI-197257 at 3-4. The record does not support that claimant was discharged.

The record shows that the nature of the work separation was a voluntary leaving that occurred on April 12, 2022. On that date, the employer's co-owner presented claimant with two options: one option that would involve continued employment but with more in-office work and a second option in which claimant could "part ways" with the employer and receive a severance package. Transcript at 24. The record shows that claimant could have continued to work for the employer for an additional period of time because the first option offered by the co-owner entailed continued employment. While the record also shows that the co-owner told claimant to cancel her other meeting scheduled for April 12, 2022 and that he told her to bring her computer and access key to the meeting, these facts do not establish that continuing work was no longer available to claimant. The record shows that the co-owner told claimant to cancel her other meeting because he thought his meeting took priority and that he told her to bring the computer and key so that if she chose to terminate her employment, she could turn those items in conveniently. Further, the co-owner credibly testified that he presented the two options because he was "open to continuing to work with [claimant]" and that he did not call the April 12, 2022 meeting with the intent of discharging claimant. Transcript at 27, 20. Accordingly, the record evidence shows that during the April 12, 2022 meeting, continuing work was available to claimant, but by choosing the second option and terminating her employment claimant was unwilling to continue working for additional period of time. Therefore, claimant voluntarily quit working for the employer on April 12, 2022.

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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Claimant quit working for the employer because she could not accept the option of continuing to work for the employer in an operational role with 30 hours per week of in-office work. Specifically, claimant believed the operational role she would likely be moved into had "10-plus hour days" and there was "one day a week, where [claimant] did not have the ability . . . to make that work[.]" Transcript at 8. Further, claimant believed that she could not work the additional four hours per week in the office because putting her children in childcare would result in her "essentially breaking even." Transcript at 8.

Remand is necessary to develop the record to determine whether claimant's increased childcare costs relating to the additional four hours she would have to be in the office was sufficient to support good cause to quit. To this end, The ALJ should ask questions to confirm that childcare (whether through a private entity, school, family member, or otherwise) was available for the additional four hours per week. If it was, the ALJ should inquire whether the additional costs of childcare made it such that it cost claimant more to work than to quit. If the record on remand shows only that paying for the additional four hours of childcare increased claimant's costs but that those costs remained less than the cost of working, the ALJ should inquire how claimant was actually benefitted by quitting her job and eliminating her income entirely. The ALJ should also ask questions to clarify how working shifts with

10-hour days would have affected claimant and to have claimant elaborate upon her testimony that there was one day per week that she could not work a 10-hour shift.

Further, the ALJ should ask questions to develop the record regarding how the domestic violence claimant experienced from her husband factored into her decision to quit, and whether the record supports that claimant left work with good cause pursuant to 471-030-0038(1)(e)(A) & (5)(g).

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-1977257 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-197257 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 21, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. Order No. 22-UI-197257 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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