

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0951

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 15, 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 May 29, 2022 (decision # 140140). Claimant filed a timely request for hearing. On August 23, 2022, ALJ Kaneshiro conducted a hearing, and on August 24, 2022 issued Order No. 22-UI-201190, affirming decision # 140140. On September 9, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's written argument was considered to the extent it was based on the record.

EVIDENTIARY MATTER: The order under review stated that ". . . Claimant's Exhibit 2 [was] admitted into the record." Order No. 22-UI-201190 at 1. Exhibit 2 was not marked in the record. As a clerical matter, EAB identified the exhibit based on the ALJ's description of it, and marked it as Exhibit 2. Audio Record at 6:00 to 7:53.

FINDINGS OF FACT: (1) Columbia State Bank employed claimant as a branch manager from April 7, 2014 through May 27, 2022.

(2) Claimant had an anxiety disorder for which he was prescribed medication since at least April 2020. He did not make this known to the employer prior to his resignation.

(3) In April or May 2022, the assistant branch manager and a banker at claimant's branch separated from their employment. Their positions left the branch short-staffed, exacerbating claimant's mental health condition. He understood that as the only remaining member of management at the branch that he could not leave the branch at any time it was open, even for normal breaks. Claimant recommended a specific candidate be interviewed for the assistant branch manager position, but the employer declined and decided not to fill the position at all due to business needs.

(4) Prior to these vacancies occurring, the employer had made accommodations when claimant complained of his branch being short-staffed during a previous period by allowing the branch to close for employee breaks.

(5) On May 23, 2022, claimant emailed a letter of resignation to the employer stating he was quitting to accept a position with another bank. He had not actually been offered any position. His true reasons for quitting were stress over the employer's decision not to fill the assistant manager position, and that the vacancy was preventing him from performing his job duties to the extent he was fearful of being discharged. The email stated claimant intended to work through a notice period of June 3, 2022. Claimant did not disclose the true reasons he was quitting to the employer until after he sent his resignation email.

(6) On May 24, 2022, claimant consulted his doctor about work-related stress and anxiety. He was given a letter, which he provided to the employer, excusing him from work through May 30, 2022. The doctor cleared claimant to return to full-time work as of May 31, 2022. Exhibit 2 at 3. Prior to his resignation, claimant had been approved for vacation leave beginning June 1, 2022. On May 28, 2022, claimant emailed the employer to inform them he would not be serving out the rest of the notice period due to his pre-scheduled travel plans. The employer agreed to waive the remainder of his notice period. Claimant was paid sick leave through May 27, 2022.

(7) Had claimant informed the employer of his concerns over the vacant assistant manager position prior to quitting and its impact on his anxiety disorder, the employer still would not have filled the position. However, they would have made other accommodations, such as sending short-term or long-term temporary employees to assist at the branch, or reducing hours or closing the branch for employee breaks. The employer would have granted claimant additional leave for his mental health condition if requested. Claimant's supervisor offered to consider claimant for other positions as an alternative to his resignation.

(8) At the time of claimant's resignation, the employer did not intend to discharge or discipline claimant for his work performance or any other reason. Claimant's branch had received a satisfactory rating on an audit in 2021 and there were no plans to audit it again until 2023. Claimant had been warned about productivity in 2021, but was meeting expectations in 2022 prior to the positions at his branch becoming vacant.

CONCLUSIONS AND REASONS: Claimant voluntarily 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 an anxiety disorder, 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 voluntarily quit work by submitting his resignation email on May 23, 2022. Though the email cited claimant's only reason for leaving as having accepted a position with another bank, claimant admitted that no definite offer of other employment had been made at that time. Transcript at 15. During a conversation that ensued between claimant and his supervisor after the email was sent, claimant revealed that his true reason for quitting was the employer's decision not to fill a vacant assistant branch manager position.

Claimant believed that he was unable to take normal breaks during the day due to the vacant position. As the only member of management on duty, he could not leave the bank even for short bathroom breaks. Claimant did not complain about this to the employer in May 2022, prior to his resignation. Claimant's supervisor testified that had he known of this concern, he could have moved other employees to the branch to cover breaks or altered the branch's hours to do so. During a similar short-staffing situation at the branch in the past, the employer allowed claimant to close the branch for breaks, which resolved the problem. More likely than not, the employer would have also satisfactorily resolved the problem in this instance if claimant had brought it to their attention.

Claimant experienced increases in his stress and anxiety symptoms directly related to the employer's refusal to fill the vacant position. Claimant felt that he had to spend the majority of his working time performing functions of the vacant position rather than his own. He feared that his branch was overdue to be audited and that the branch might fail the audit without the work of an assistant manager being done. Transcript at 10. Claimant was warned in 2021, while in a similar period of being short-staffed at his branch, that some areas of his job performance were not meeting expectations. Transcript at 10. However, he met the employer's expectations in the first quarter of 2022 when the branch was sufficiently staffed. Transcript at 10. Nonetheless, he felt his job was in jeopardy due to the vacancy. Transcript at 11.

Claimant's supervisor, who likely had superior knowledge of when the branch was to be audited, testified that claimant's branch was not due for an audit until 2023. Transcript at 22. There is no evidence that the employer considered claimant's job to be in jeopardy at the time of his resignation. Upon receipt of claimant's resignation email, his supervisor replied with an offer to consider him for other positions at the bank in an effort to continue his employment. Transcript at 22. This is compelling evidence that claimant's subjective fears of imminent discharge were objectively unfounded.

The employer had decided against filling the assistant branch manager position after initially posting it and considering candidates, including a candidate recommended by claimant. The employer then reasoned that because the branch's transaction volume was second-lowest in the region, and an impending merger may have resulted in consolidation of the branch, that it was not in the bank's interest to fill the position at that time. Transcript at 30. This was a good-faith decision made by the employer about how to run their business with which claimant disagreed. Despite the subjective fears about the prospect of being discharged that this decision caused him, a reasonable and prudent person with the characteristics and qualities of an individual with anxiety disorder would not have left the work for this reason. Instead, such a person would have first directly communicated their concerns to the employer in

an attempt to assuage their anxieties, potentially lessen their stress, and prevent the feared outcome from occurring.

Claimant testified he had not made the employer aware of his concern over the decision not to fill the vacancy until after he submitted his resignation. Transcript at 32. He also stated that he never disclosed to the employer that the problem was exacerbating his stress and anxiety disorder and that he never requested an accommodation of the employer, other than to fill the vacancy. Transcript at 14. Claimant's supervisor was willing to send additional employees to the branch as needed on a short-term or long-term basis, or to assist in the work himself. He was willing to adjust the branch hours or allow claimant to close it during the day for breaks. He would have allowed claimant additional leave if requested, to deal with his stress and anxiety disorders. He asked to consider claimant for other openings at the bank in lieu of accepting his resignation. These were all reasonable alternatives to leaving work which claimant failed to fully explore by not timely disclosing his concerns to the employer.

Alternatives may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. If an issue regarding the futility or fruitlessness of an alternative is raised in the record, it must be resolved before concluding that claimant did not have good cause to quit work. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). The employer's record of granting claimant leave for his condition in May 2022 and allowing claimant to close the branch for breaks previously make it more likely than not that claimant's requests for any of these alternatives would not have been futile. Given these alternatives to quitting when he did, claimant has not proven that the effects on him of the employer's decision to leave the assistant branch manager position vacant were of such gravity that no reasonable and prudent person with the characteristics and qualities of an individual with an anxiety disorder would have continued to work for their employer for an additional period of time.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective May 29, 2022.

DECISION: Order No. 22-UI-201402 is affirmed.

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

DATE of Service: December 6, 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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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.

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