

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1088

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 12, 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 12, 2020 (decision # 91208). Claimant filed a timely request for hearing. On October 7, 2022, ALJ Sachet-Rung conducted a hearing, and on October 13, 2022, issued Order No. 22-UI-205060, affirming decision # 91208. On October 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Danville Services employed claimant as a county director of residential facilities for people with mental and physical disabilities from March 23, 2020 until April 19, 2020.

(2) Upon being offered this position, claimant understood his primary work duties would be administrative. However, he was also expected to provide hands-on medical care to residents when the facilities were short staffed. Claimant had no prior training or experience in providing this direct care.

(3) The employer's policies stated that an employee was not permitted to provide direct care to residents without proper training and supervision, and could do so only in accordance with state regulations requiring such training and supervision.

(4) Claimant requested training on providing direct care from his supervisor multiple times, as well as to another manager and human resources, but did not receive any such training during his four weeks of employment.

(5) Despite claimant's lack of training, on at least two occasions he was the only employee available when a resident required time-sensitive direct care that he was unqualified to provide.

(6) On April 19, 2020, claimant believed that he would be required to work the night shift in a facility where he would likely be the only employee available to provide direct care for which he was still not trained. Fearing for the residents' safety and his own potential liability, claimant voluntarily quit work that day.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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).

The order under review concluded that claimant voluntarily quit without good cause, reasoning that claimant's situation was not of such gravity that he had no reasonable alternative to leaving work. Order No. 22-UI-205060 at 3. As discussed below, claimant did not have reasonable alternatives to quitting and left the work with good cause.

The employer hired claimant for what he believed to be an administrative position where he would supervise employees who provided direct care to residents, but would not engage in direct care himself as his "main job." Transcript at 6-7. He came to understand that he would have to perform direct care work in the absence of his subordinate employees. The employer's witness testified that the employer's policy required any employee to be trained in cardiopulmonary resuscitation, first aid, and medication distribution prior to that employee working alone in a facility. She also stated that more advanced medical procedures, such as inserting catheters or feeding tubes, could only be done by an employee with the training and supervision of a nurse. She further testified that such training and supervision was also a state requirement. The employer had no record that claimant received any of this training during his employment.

Claimant testified that on at least two occasions during his employment, his subordinate employees were called away on emergencies, leaving him as the lone employee available to provide time-sensitive medical care to residents. This care included inserting a catheter and inserting a feeding tube, which claimant did not know how to do because he had not been trained. These situations caused claimant fear that his lack of training was endangering the health of the residents, and creating personal liability if the residents were injured as a result. On April 19, 2020, claimant was expecting to again be placed in this situation of having to provide direct care alone when he would have to cover for a subordinate employee on the night shift, and decided to immediately quit the employment instead.

Claimant's required participation in these situations without proper training constituted a grave situation. It caused him concern for the health and safety of the residents for which he was responsible and for his own potential liability. The promised training had been delayed several times over the claimant's employment and he had no reason to expect that it would be completed prior to the next time he would be left alone to care for a resident, putting their health and safety at risk. Claimant testified that he brought up his concerns over the lack of training to his direct supervisor on multiple occasions, but the

supervisor repeatedly delayed the required trainings for various reasons. Transcript at 7. Claimant also addressed these concerns to another manager and to human resources, but was left continuing to wait for the training from his direct supervisor. Transcript at 7, 12. By contrast, the employer's witness testified that their human resources department had no record of claimant's complaints. Transcript at 16-17. Claimant's first-hand account that he made the complaints is entitled to greater weight than the employer's mere absence of records of him having done so. Therefore, more likely than not, claimant complained to multiple people in authority about his concerns, but obtained no results. As such, making further complaints likely would have been futile, and would not have been a reasonable alternative to quitting.

Aside from making further complaints, the employer contended that claimant had the alternative of refusing the employer's directives to work in situations where he might be left alone with patients. Transcript at 18. An employee is expected to follow the instructions of the employer, and would objectively fear that refusal to perform his work as instructed would constitute insubordination and subject him to dismissal for misconduct, making such a refusal an unreasonable alternative to quitting. *See Campbell v. Employment Department*, 245 Or. App. 573, 581 (Or. Ct. App. 2011). The employer also contended that claimant could have sought a transfer to another position, but conceded that each of the alternate positions identified would have required the same direct care of residents for which claimant lacked training. Transcript at 19. Accordingly, claimant had no reasonable alternatives to quitting work when he did.

Therefore, claimant voluntarily quit work with good cause and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-205060 is set aside, as outlined above.

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

DATE of Service: January 5, 2023

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.

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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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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