

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1111

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 30, 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 September 18, 2022 (decision # 82744). Claimant filed a timely request for hearing. On October 26, 2022, ALJ Taylor conducted a hearing at which the employer failed to appear, and on October 28, 2022 issued Order No. 22-UI-206154, affirming decision # 82744. On November 4, 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 she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Audi Wilsonville employed claimant as an accounts payable and receivable clerk from January 11, 2022, until September 19, 2022.

(2) Claimant was diagnosed with temporomandibular joint (TMJ) disorder, a disorder involving jaw pain, many years prior to working for the employer. Claimant suffered symptoms of this condition, as well as migraines, during her employment. These symptoms subsided after she separated from the work.

(3) Claimant experienced discord with her supervisor and closest coworkers, which claimant felt was largely due to a difference in age. Claimant felt that the employer desired to replace her because they had posted an advertisement to fill her accounts payable position when there were no openings or office space for an additional person in the same position as claimant. The stress caused by this work environment caused claimant's migraines and TMJ symptoms to recur.

(4) On Friday, September 16, 2022, claimant was performing her usual work when she alerted the person training her that she would not record the data from a particular transaction because she felt it was incomplete, and company procedures and commonly accepted accounting principles prohibited its

entry. The trainer told claimant that she needed to do it anyway. Claimant began suffering from a migraine and notified her supervisor that she was leaving early for that reason. She also reported her disagreement with the trainer to the supervisor.

(5) On Monday, September 19, 2022, when claimant next reported for work, she spoke with a human resources representative, who told claimant that she had been suspended and would not be paid accrued sick leave for the hours she missed after leaving early on September 16, 2022. After further discussion, the employer agreed to payment of the sick leave but did not resolve whether claimant had been suspended. During this conversation, which also included claimant's supervisor, claimant was told that her coworkers "didn't feel that [she] was learning," and that "sometimes things just aren't a good fit." Transcript at 12-13. Claimant also inquired if she could transfer to another department to resolve these problems, but the human resources representative implied that there were no positions available, and if there were, claimant's pay would be reduced. Transcript at 23-24.

(6) Claimant interpreted the words and actions of her coworkers, supervisor, and human resources representative to mean that the employer did not want her to continue working there, and that they would try to force her to quit. Claimant immediately resigned following the conversation.

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). Claimant had migraines and TMJ, 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.

The order under review concluded that claimant quit work without good cause because a reasonable and prudent person with a history of migraines and TMJ, exercising ordinary common sense would not have left work under the circumstances. Order No. 22-UI-206154 at 3. The record does not support this conclusion. The employer's apparent intent to force claimant out of the job through the words and actions of claimant's superiors and coworkers would have caused such a reasonable and prudent person with claimant's conditions to leave work.

Claimant was previously diagnosed with migraines and TMJ but was asymptomatic for many years before she began working for the employer. The stress claimant experienced from the employer's treatment caused these conditions to recur. Specifically, claimant's refusal of the employer's directive to perform work in a way that conflicted with her training and professional ethics caused her to feel so ill that she had to leave work early on September 16, 2022. Upon her return to work on September 19, 2022, the employer told claimant that they did not intend to pay her accrued sick time for the hours

missed because she had been suspended from work, presumably for refusing the directive and/or leaving early. Claimant was never otherwise informed of such a suspension.

To compound matters, the employer then confirmed claimant's suspicions that her coworkers and supervisors were unhappy working with her. The employer concluded this conversation by saying "sometimes things just aren't a good fit," which led claimant to believe that the employer had "disrespected, belittled, and humiliated" her in an effort to get her to quit work. Transcript at 10-13. This belief was supported by claimant's earlier discovery that the employer had advertised to fill her position while there were no vacancies and no ability to expand the number of staff in her department. The employer's implied message to claimant that they did not want her to continue working there and would continue to treat her accordingly to persuade her to quit was such that a reasonable and prudent person, prone to stress-induced migraines and TMJ, would not have continued to work for the employer for an additional period of time.

Claimant explored the alternative of transferring to another department in her final conversation with the employer, but they implied they had no positions available, and that any other positions for which she might be considered had lower rates of pay than her current position. Given the employer's statement that claimant was not "a good fit," she reasonably inferred that this feeling would apply to her working at another position within the company. The record therefore shows that requesting a transfer likely would have been futile. Accordingly, claimant had no reasonable alternative but to leave work on September 19, 2022.

Claimant therefore quit work with good cause, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-206154 is set aside, as outlined above.

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

DATE of Service: January 9, 2023

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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