

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1156

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 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 August 14, 2022 (decision # 81012). Claimant filed a timely request for hearing. On October 31, 2022, ALJ Lewis conducted a hearing at which the employer did not appear, and on November 1, 2022 issued Order No. 22-UI-206365, affirming the Department's decision. On November 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Claimant contended he was prevented from offering the information at hearing because did not have adequate time to submit it after receiving the Notice of Hearing. Claimant's Written Argument at 1. However, claimant did not request postponement of the hearing or ask the ALJ for additional time to submit the information. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Jentay LLC employed claimant as a lead composite technician from February 22, 2021 until August 18, 2022.

(2) Claimant suffered from mental health challenges dating back to 1990 for which he sought regular treatment from a psychiatrist through 2008. He stopped receiving psychiatric care in 2008 because of financial reasons. Transcript at 18.

(3) On July 13, 2022, a coworker approached claimant and began talking about claimant's religion and age in a manner claimant found offensive. The coworker became angry and screamed at claimant. Claimant testified the coworker had a history of violence in the workplace, outbursts, and drug use and that another coworker was afraid of the coworker. Claimant immediately reported this to the employer

who advised claimant not to engage with the coworker. Claimant discussed the matter with the employer again the following day without additional response.

(4) Following this incident, claimant experienced nightmares, poor attention, crawling sensations on his skin, hyper-arousal, paranoia, and insomnia.

(5) On August 2, 2022, the coworker asked claimant where a roll of masking paper was located and claimant showed him the location. The coworker screamed at claimant that he was making stuff up and lying. Claimant immediately complained to the employer, as did the coworker, and the employer responded that one of the two of them had to go home. Claimant decided to go home.

(6) That night, the employer called claimant at home to advise him that his work schedule was changing to nights, when the coworker would not be present.

(7) Over the next two weeks, the employer continued to change claimant's schedule in response to claimant's objections over working with the coworker, working alone, or working on Sundays at times he wished to attend church. This included creating a graveyard shift and asking claimant to work it, asking claimant to work weekends, and to work 12 hour shifts.

(8) On August 15, 2022, claimant sought treatment from a doctor for mental health symptoms he attributed to his fear of the coworker. He was prescribed medication and was directed to file a worker's compensation claim, but was not restricted from continuing to work. At the time, claimant's schedule was such that he was not working when the coworker was present and was not working at times that interfered with him going to church. Nonetheless, claimant remained fearful that the coworker would use his key to enter the worksite at night when claimant was working and harm him.

(9) On August 18, 2022, claimant notified the employer that he was resigning, effective immediately. He did not work for the employer thereafter.

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 a mental health condition dating back to 1990. Claimant's mental health condition included symptoms involving anxiety, nightmares, and insomnia, which constituted 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 without good cause and was disqualified from receiving benefits. It reasoned that because claimant did not objectively have reason to believe the coworker would harm him, the situation was not sufficiently grave to justify quitting, and that claimant had the reasonable alternative of working the alternate schedule that separated claimant from the coworker. Order No. 22-UI-206365 at 3. However, the order failed to consider that a reasonable and prudent person with claimant's longstanding mental health challenges would have feared harm from the coworker to the extent that working for the employer was no longer possible, as claimant did.

After claimant was sent home following the August 2, 2022 incident, the employer attempted to resolve the situation by changing claimant's shifts so that he would not be working at the same time as the coworker. The employer continued to modify claimant's schedule to accommodate claimant's concerns as they arose. Despite these accommodations, claimant still feared the coworker would appear during claimant's shift and physically harm him. Claimant's fear of the coworker and the mental health symptoms caused or exacerbated by it caused claimant to see a doctor on August 15, 2022. Despite being prescribed anti-anxiety medication, claimant continued to fear harm from his coworker which caused claimant to quit work on August 18, 2022.

Claimant's mental condition was such that his fears of imminent physical harm from the coworker affected claimant both at and away from work and were not alleviated by a change in schedule. During his employment, claimant experienced nightmares involving his coworker, poor attention, crawling sensations on his skin, hyper-arousal, paranoia, and insomnia. Transcript at 18-19. Claimant testified that he was diagnosed with "ADHD [attention deficit hyperactivity disorder]" around 1990 or 1991, but that he believed that he actually had "complex PTSD [post-traumatic stress disorder] from childhood." Transcript at 17-18. Claimant believed that the symptoms he encountered while working were part of his PTSD and began because of the coworker's erratic behavior beginning with the July 13, 2022 incident. Claimant sought mental health treatment during his employment where he was prescribed anti-anxiety medication. A reasonable and prudent person with the characteristics and qualities of an individual with claimant's mental health condition experiencing anxiety, insomnia, nightmares, and sensations of skin-crawling would not have continued to work for their employer, and therefore the situation was sufficiently grave to justify quitting if no reasonable alternatives were available.

The claimant did not have further reasonable alternatives to quitting. Claimant repeatedly sought assistance from the employer and adjusted his work schedule and sought medical treatment. Claimant continued to experience the same symptoms and fear after the employer adjusted claimant's schedule. Due to his impairment, claimant believed that the coworker would stop at nothing to harm him. An individual with claimant's mental health challenges would have concluded there was no reasonable alternative to leaving. Accordingly, claimant has established good cause for quitting.

Therefore, claimant left work with good cause. He is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-206365 is set aside, as outlined above.

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

DATE of Service: January 25, 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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