

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1166

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 30, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective September 18, 2022 (decision # 105540). Claimant filed a timely request for hearing. On November 17, 2022, ALJ Clemons conducted a hearing, and on November 22, 2022 issued Order No. 22-UI-207946, affirming decision # 105540. On November 25, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dateline Exports, Inc. employed claimant as a logistics coordinator from September 24, 2020 through September 21, 2022.

(2) In 2018, claimant was diagnosed with anxiety and depression. Claimant's anxiety was particularly triggered by "being around people." Transcript at 12. Claimant's partner also worked for the employer, and suffered from similar conditions.

(3) Claimant never specifically advised the employer about her mental health conditions because she did not feel comfortable speaking to the employer's human resources (HR) manager, as claimant had had "several bad interactions" with her and was "absolutely not comfortable speaking to her about any personal issues." Transcript at 25.

(4) The employer permitted some of their employees to work from home. Claimant requested to work from home, as she believed it would help alleviate her anxiety, but the employer denied her request because they "weren't sure if [claimant] was upset with the company." Transcript at 8.

(5) On September 1, 2022, the employer instituted a new attendance policy. Under the new policy, an "unexcused absence" was defined as an absence in which an employee did not provide the HR manager with notice of the absence at least two hours prior to their start time for the day, and in which the employee did not have sufficient paid time off to cover the absence. Exhibit 1 at 4. The policy also

stated that eight occurrences of unexcused absences within a twelve-month period were grounds for termination. Exhibit 1 at 5. Absences that were covered under the Family and Medical Leave Act (FMLA) or provided as a reasonable accommodation under the Americans with Disabilities Act (ADA) were excepted from the policy. Exhibit 1 at 4. Claimant received a copy of the policy and was aware of what it required.

(6) Between September 12, 2022 and September 16, 2022, claimant accrued five unexcused absences due to her mental health conditions. Claimant's partner was also absent from work due to his mental health conditions during this time.

(7) On September 20, 2022, claimant was absent again due to her mental health conditions, which the employer considered to be an unexcused absence. Claimant's manager left a voicemail for claimant that day, notifying her that if she was absent on Wednesday, September 21, 2022, she would reach eight unexcused absence occurrences, which would "result in a termination." Transcript at 15.

(8) On September 21, 2022, claimant reported for work, so as to avoid discharge. However, claimant's partner was absent again that day, and he was discharged as a result. When claimant's partner attempted to explain to his manager that his absences had been due to mental health issues, the manager told him he was "full of shit." Transcript at 5. As a result of the employer's decision to discharge her partner, claimant determined that she was likely to be discharged soon. Claimant also believed that being discharged would impede her efforts to find other employment. As such, claimant voluntarily quit work on September 21, 2022.

(9) Prior to quitting, claimant did not seek FMLA leave or an accommodation under the ADA.

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 anxiety and depression, a permanent or long-term "physical or mental impairment[s]" 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 due to her belief that the employer would likely discharge her in the near future, and that being discharged would have a negative effect on her ability to become reemployed. Claimant's prior absences were caused by her mental health conditions, and the record suggests that these conditions would have likely led to further absences from work had claimant continued working for the employer. The order under review concluded that while claimant's mental health conditions were grave, she quit without good cause because she did not seek the reasonable alternative of "discussing her

mental health condition with her employer.” Order No. 22-UI-207946 at 3. The record does not support the conclusion that claimant failed to seek reasonable alternatives to quitting.

As a preliminary matter, the record shows that claimant’s circumstances were grave. Claimant’s decision to quit was motivated by her concerns that being discharged would interfere with her efforts to find new employment. Although claimant did not offer evidence to support this concern, it is both plausible and uncontested in the record. Further, the chronic nature of claimant’s conditions suggests that claimant would likely have been unable to avoid further absences in the near future had she not quit, and that the employer would have discharged her as a result. Because claimant reasonably believed that she would be discharged imminently if she did not quit, and because being discharged would make it more difficult for her to obtain new employment, claimant’s circumstances were grave.

There is some conflict in the record as to whether claimant would have been immediately discharged had she been absent from work on September 21, 2022. Despite the voicemail that claimant’s manager left for her on September 20, 2022, the record shows that claimant actually had six unexcused absences, and not seven, at the time that she quit. Because the employer’s policy provided for termination once *eight* unexcused absences had accrued, claimant would not likely have been discharged on September 21, 2022 had she been absent that day. However, because she would likely have been discharged in the near future, the circumstances were still grave. *See Dubrow v. Employment Dep’t.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Further, claimant had no reasonable alternative but to quit. The order under review suggested that “discussing her mental health condition with her employer” would have constituted a reasonable alternative to quitting because doing so would have given the employer “the opportunity to address her concerns or take her request for remote work under special consideration.” Order No. 22-UI-207946 at 3. However, the record shows that doing so would have been futile. Claimant had previously experienced several negative interactions with the employer’s HR manager, and therefore was not comfortable discussing such concerns with her. A reasonable and prudent person suffering from anxiety and depression—particularly anxiety that was, as in claimant’s case, triggered by social interactions—would not have attempted to discuss such sensitive personal matters with a person with whom they were not comfortable. Additionally, when claimant’s partner attempted to speak to the employer about similar concerns, his manager told him that he was “full of shit” and later discharged him, rather than attempting to accommodate his mental health conditions. Faced with such evidence, claimant reasonably concluded that the employer would not have offered her accommodations that would allow her to avoid discharge. Doing so would therefore have likely been futile, and not a reasonable alternative to quitting.

Because claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 22-UI-207946 is set aside, as outlined above.

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

DATE of Service: February 1, 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.

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.

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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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