

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1173

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 27, 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 August 28, 2022 (decision # 65349). Claimant filed a timely request for hearing. On November 15, 2022, ALJ Lewis conducted a hearing, and on November 16, 2022 issued Order No. 22-UI-207463, affirming decision # 65349. On November 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's 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 her from offering the information during the hearing. 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. EAB considered claimant's argument to the extent it was based on the record. Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Talentbridge Holdings LLC, a staffing agency, employed claimant on a 90-day work assignment as an estate care representative for a client bank from August 8, 2022, until September 1, 2022.

(2) Claimant underwent training during the entire time she was employed. September 2, 2022 was to be the final day of training, with claimant spending that day beginning to answer calls with the assistance of a trainer. Claimant's primary job responsibility after training was to answer calls related to the administration of estates of deceased customers.

(3) On August 29, 2022, claimant notified the employer that she would be unable to attend work on September 2, 2022 due to a death in the family. The employer relayed this information to their client bank, who replied that they would not arrange for claimant to make up the missed training and she would be expected to begin answering calls on her own on the next workday following her absence.

(4) Claimant and the employer understood this to be an entry-level position at the time claimant was hired, however claimant learned during her training that this was a skilled position that required banking experience and computer and phone skills that claimant did not possess. Claimant took her concerns to the employer and client bank managers without resolution.

(5) On September 1, 2022, claimant felt that she had not been sufficiently trained to answer calls on her own and that the bank's refusal to provide one-on-one training with her because she had to miss a day of work to attend a funeral positioned her to be unable to perform her job duties after September 2, 2022. She feared this lack of training and experience would harm the bank's customers. Claimant quit the work assignment on September 1, 2022.

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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

The order under review concluded that claimant's fears of working independently because her training was inadequate did not constitute a situation of sufficient gravity to justify quitting, and that claimant had a reasonable alternative of seeking additional training or working independently despite the lack of training. Order No. 22-UI-207463 at 2. The record does not support these conclusions.

Although claimant received several weeks of training, the record reflects that she did not have the skills or experience to begin performing her job duties after September 2, 2022, in part because claimant did not have the opportunity to answer calls with individual assistance from a trainer. The bank was only willing to provide that specific training on September 2, 2022, the day claimant could not attend work because of a family member's funeral. Given claimant's work experience and the training she received, the record supports that claimant would have been unable to assist the bank's customers independently. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that this work was unsuitable in the absence of requisite banking experience and sufficient individual training.¹ This was a reason of such gravity as to justify leaving work if no reasonable alternatives were available.

¹ Per ORS 657.190, factors to consider when evaluating the suitability of work include "prior training" and "experience . . . of the individual[.]"

Alternatives to quitting may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). Prior to quitting, claimant took her concerns to the employer and the client bank's managers. She testified that the bank managers told her that her assignment was not an entry-level position and that employees were typically promoted to this position after other work with the bank due to the need for familiarity with their banking computer systems. Audio Record at 12:00 to 12:40. The employer told claimant they were unaware of the need for this experience when they assigned her to the position, as they believed it was entry-level. At the time claimant resigned, there was little more claimant could have done to acquire the skills or experience needed to perform the work. Claimant testified she had previously complained that the training was inadequate, to which the trainer replied, "They had to throw us in the deep end and just learn on the phones with live customers." Audio Record at 10:25 to 10:38. The bank's unwillingness to reschedule the only training that the record reflects may have helped claimant progress to the point of working independently demonstrates that further requests for training would have been fruitless. Similarly, attempting to perform a complex banking position independently without the knowledge to do so would have been futile. Accordingly, claimant had no reasonable alternatives to leaving work.

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

DECISION: Order No. 22-UI-207463 is set aside, as outlined above.

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

DATE of Service: February 2, 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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