

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1190

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 19, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective August 7, 2022 (decision # 152202). Claimant filed a timely request for hearing. On November 17, 2022, ALJ Chiller conducted a hearing at which the employer failed to appear, and on November 22, 2022 issued Order No. 22-UI-207975, affirming decision # 152202. On November 29, 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 as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Hillsboro School District #1J employed claimant as a bus driver from August 3, 2022 until August 14, 2022.

(2) In 2006, claimant was diagnosed with osteoarthritis in both knees. Claimant is able to walk with this condition, but she feels significant pain when she puts direct pressure on her knees. Transcript at 6.

(3) On August 3, 2022, claimant began her training with the employer. During this training, claimant learned that she would need to conduct a pre-trip inspection every day at the start of her shift. This required claimant to get on her hands and knees underneath the bus. Claimant did not know about the pre-trip inspection prior to taking the position, and was concerned that getting underneath the bus would aggravate her osteoarthritis.

(4) Claimant spoke with each of the trainers regarding this, but the trainers were dismissive of her concern. Claimant talked with a colleague about having another bus driver perform the portion of the inspection that required getting on her knees, but the head trainer informed claimant that was not allowed. Transcript at 17. Claimant was offered kneepads and a mat to perform the inspection, but they would not help because any direct pressure on claimant's knees aggravated her condition.

(5) On August 12, 2022, as a part of her training on how to perform the pre-trip inspection, claimant was required to get on her hands and knees and then lay underneath the bus. Claimant attempted to bend down rather than get on her hands and knees, but was directed to get on her hands and knees and then get underneath the bus. Transcript at 20. Claimant got down on her hands and knees and laid underneath the bus in five locations. When claimant arrived home that evening, she could barely walk or use the stairs in her home because of the pain in her knees.

(6) On August 14, 2022, claimant quit work by sending an email to her supervisor stating that could not continue to work in this position because of the physical demands.

CONCLUSIONS AND REASONS: Claimant quit work with good cause and is not disqualified from benefits based on the work separation.

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 osteoarthritis in both knees, 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 working for the employer without good cause because although claimant’s situation was grave, she did not pursue the reasonable alternative of discussing “possible accommodations with anyone at the workplace other than her trainers.” Order No. 22-UI-207975 at 3. The record supports the order’s conclusion that claimant’s situation was grave. However, the record does not support the conclusion that further discussion of possible accommodations with the employer was a reasonable alternative to quitting.

Upon beginning her training, claimant learned that she would be required to get down on her hands and knees and lay underneath the bus to perform a pre-trip inspection every day. Performing this inspection would aggravate claimant’s osteoarthritis and cause claimant significant pain. Claimant’s trainers were aware of her condition, and offered her two pieces of equipment to accommodate her. Neither was sufficient to alleviate the pain caused by claimant’s condition. When claimant trained on this portion of the inspection, she suffered significant pain and was barely able to walk that night. As such, a reasonable and prudent person with claimant’s impairment would have quit work if there were no reasonable alternative.

The record shows that claimant did not have a reasonable alternative to quitting. While claimant only sought accommodations from her trainers, there is nothing in the record to show that other representatives of the employer could have offered her additional accommodation. The employer failed to appear at the hearing, and the record contains no evidence that the employer had or would be willing to obtain any additional equipment. Nor is there evidence that the employer was willing to adjust the

physical requirements to accommodate claimant. When claimant attempted to perform the inspection in a way that did not aggravate her osteoarthritis, she was instructed that she needed to get into a position that did aggravate it. Lastly, the requirement that claimant personally perform the inspection further limited any potential accommodations the employer could offer. As such, the record does not show that the employer was willing or able to offer claimant additional accommodation that would have allowed her to complete the pre-trip inspection without experiencing significant pain. Therefore, the record shows that claimant had no reasonable alternative to quitting when she did.

For these reasons, claimant quit work with good cause and is not disqualified from benefits based on the work separation.

DECISION: Order No. 22-UI-207975 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 الاستئناف 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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