

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0025

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 26, 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 7, 2022 (decision # 144239). Claimant filed a timely request for hearing. On December 2, 2022, ALJ Chiller conducted a hearing, and on December 7, 2022 issued Order No. 22-UI-209112, affirming decision # 144239. On December 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: Claimant submitted a letter from his doctor as an attachment to his request for hearing. The Office of Administrative Hearings (OAH) and the employer each received a copy of the letter in advance of the December 2, 2022 hearing in this matter. Audio Record at 4:20 to 5:48. Claimant wished to have the letter admitted into evidence and, before ruling on its admission, the ALJ marked it as Exhibit 1. Although the ALJ and claimant agreed Exhibit 1 was legible, the quality was poor. Audio Record at 6:03 to 6:15. The employer’s representative stated he could “maybe tell what some of the words are” but it was “really hard to read.” Audio Record at 6:21 to 6:28. Based on this, The ALJ ruled that the employer “effectively has not received a copy” of Exhibit 1 and excluded the letter from evidence. Audio Record at 6:42.

OAR 471-041-0090(1) (May 13, 2019) provides that EAB may consider information not received into evidence at the hearing if necessary to complete the record. Exhibit 1, which discusses the nature and extent of claimant major depression and anxiety conditions, is relevant and material to the merits of this case, and its admission into evidence is necessary to complete the record. Accordingly, Exhibit 1 is admitted to complete the record. Any party that objects to the admission of Exhibit 1 must submit such

objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, Exhibit 1 will remain in the record.

WRITTEN ARGUMENT: Claimant submitted written arguments on December 27, 2022 and January 31, 2023. EAB considered claimant's written arguments in reaching this decision.

FINDINGS OF FACT: (1) Multnomah County School District # 1 employed claimant as a middle school teacher from August 16, 2015 until August 11, 2022.

(2) In 2002, claimant was diagnosed with major depression and anxiety. Thereafter, off and on for the next twenty years, claimant's conditions caused him severe chronic sleep deprivation, panic attacks, and difficulty with activities of daily living. At times, the conditions caused claimant to consider suicide and led to him being hospitalized twice.

(3) Stress and conflict at work severely aggravated claimant's symptoms. In the school year beginning August 2021, the employer decided not to assign claimant to a dedicated classroom and instead required him to cart his materials from room to room between classes. Claimant also was required to ensure that students complied with COVID-19 safety protocols. These aspects of claimant's job triggered severe symptoms. Claimant also felt overwhelmed by his workload and had two panic attacks over the course of the 2021-2022 school year.

(4) In late February 2022, claimant felt he had "no more left to give and was unable to perform [his] duties," and took a medical leave of absence from work. Transcript at 10. In March 2022, claimant attended a six-week outpatient program to treat his major depression and anxiety. In April 2022, claimant's doctor prescribed medication to treat claimant's conditions. On or around the same time, claimant participated in therapy sessions to treat the conditions. Claimant's severe symptoms persisted despite these efforts.

(5) In May 2022, claimant extended his leave of absence by taking disability leave. Claimant's severe symptoms continued to persist. On July 12, 2022, claimant's doctor determined that claimant was "unable to take care of even simple issues and activities of daily living," and could no longer perform his work duties. Exhibit 1 at 1. Claimant's doctor recommended that claimant resign from his job. Exhibit 1 at 1.

(6) On or around early August 2022, claimant submitted to the employer a request for a change of assignment or transfer to another position. On August 10, 2022, claimant gave the employer a resignation letter effective the next day. On August 11, 2022, claimant resigned pursuant to his doctor's advice, and because of "the suffering and challenges that [he] had to face" due to his severe symptoms. Transcript at 26.

(7) At the time that claimant resigned, it was not possible to receive a change of assignment or position transfer from the employer. Claimant could only have applied for a different position, for which there was no guarantee he would be offered the position, and continue working in his current job in the meantime.

(8) Other than making the request for a change of assignment or position transfer, claimant did not raise his symptoms with school administrators prior to resigning. Claimant did not do so because he did not think it was possible for administrators to make adjustments such as assigning him a dedicated classroom because the class schedule was set and he did not think classrooms could be reassigned.

CONCLUSIONS AND REASONS: Claimant 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 major depression and anxiety, 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.

The order under review concluded claimant quit work without good cause because he did not pursue reasonable alternatives to quitting work. Order No. 22-UI-209112 at 3. The record does not support this conclusion.

Claimant quit work with good cause. Claimant suffered from major depression and anxiety, which caused him to experience severe and debilitating symptoms including sleep deprivation, panic attacks, and suicidal ideation. These symptoms led to claimant being hospitalized in the past. The record shows that during the school year beginning August 2021 these symptoms became severely aggravated. Claimant became overwhelmed and had two panic attacks over the course of the 2021-2022 school year. In late February 2022, claimant felt he had “no more left to give” and took a medical leave of absence. Transcript at 10. In mid-July 2022, claimant’s doctor determined that claimant was “unable to take care of even simple issues and activities of daily living,” and could no longer perform his work duties. Exhibit 1 at 1. Claimant resigned on August 11, 2022 pursuant to his doctor’s advice, and because of “the suffering and challenges that [he] had to face” due to his severe symptoms. Transcript at 26. These facts show that claimant faced a grave situation. Under these circumstances, a reasonable and prudent person with the characteristics and qualities of an individual with claimant’s major depression and anxiety would quit work if there were no reasonable alternative.

Claimant pursued reasonable alternatives to quitting work to no avail. Claimant took a leave of absence in late February 2022 and extended it in May 2022 but his severe symptoms did not abate. Claimant tried to treat his depression and anxiety through a six-week outpatient program, counseling sessions, and through medication prescribed by his doctor. However, his conditions persisted despite the treatments. Shortly before he quit, claimant made a request for a change of assignment or position transfer. However, a position transfer was not a reasonable alternative to quitting because it was not possible to receive a transfer from the employer at that point in time. Claimant could only have applied for a different position, for which there was no guarantee he would be offered the position, and continue working in his current job in the meantime.

Similarly, more likely than not, it also was not possible for claimant to receive work modifications such as assignment to a dedicated classroom. Claimant testified credibly that he did not think it was possible for school administrators to assign him a dedicated classroom because the class schedule was set and he did not think classrooms could be reassigned. Transcript at 17. The employer's witness did not meaningfully rebut this assertion, stating merely that classroom assignment "[d]epends," and that claimant would need to talk to the administrator. Transcript at 36. In any event, even if classroom assignment had been possible, the record shows that claimant's symptoms were so severe, given that as of July 2022 claimant could not take care of activities of daily living, that assignment to a classroom likely would not have been sufficient to address the gravity of claimant's situation. Therefore, assignment to a dedicated classroom was not a reasonable alternative to quitting work.

Accordingly, claimant quit work with good cause and is not disqualified from receiving unemployment insurances benefits based on the work separation.

DECISION: Order No. 22-UI-209112 is set aside, as outlined above.

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

DATE of Service: February 24, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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