

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0066

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 11, 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 February 7, 2021 (decision # 81207). Claimant filed a timely request for hearing. On December 14, 2022, ALJ Sachet-Rung conducted a hearing at which the employer failed to appear, and on December 20, 2022 issued Order No. 22-UI-210374, affirming decision # 81207.¹ On January 9, 2023, 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) Express Employment Professionals, a staffing agency, employed claimant at an assignment with one of their clients from approximately December 16, 2020 until February 8, 2021. For most of the assignment, claimant worked in an assembly department at the client's facility.

(2) During the assignment, claimant was pregnant. Claimant's pregnancy frequently caused her to suffer from symptoms such as nausea, vomiting, dizziness, and fatigue. Claimant sometimes became ill at work as a result. Some of these symptoms were similar to symptoms caused by COVID-19. However, claimant never contracted COVID-19 during the course of her assignment.

(3) The client maintained a policy which required employees who were experiencing symptoms of illness similar to those caused by COVID-19 to report the symptoms to the employer. Per the client's

¹ The order under review concluded that claimant was disqualified from receiving benefits effective May 8, 2022. Order No. 22-UI-210374 at 3. However, the order under review also found that claimant voluntarily quit on February 8, 2021. Order No. 22-UI-210374 at 2. It is therefore presumed that the disqualification date in the order under review is a scrivener's error, and that the intent was to disqualify claimant as of the same effective date as decision # 81207.

policy, any employee who suffered from COVID-19-like symptoms would be required to stay home without pay for ten days.

(4) Whenever claimant experienced pregnancy symptoms which were similar to symptoms of COVID-19, claimant reported them to the client. As a result, the client sent claimant home from work for ten-day periods on multiple occasions. Claimant advised her supervisor at the client's facility that she was pregnant, and that the symptoms she was experiencing were due to pregnancy rather than COVID-19. The supervisor was "very sympathetic," but "her hands were kind of tied because of the pandemic." The supervisor did not offer claimant any alternatives to the policy. Transcript at 10.

(5) On or around February 8, 2021, claimant called and left a message for her supervisor notifying them that she was experiencing pregnancy symptoms again. Because she knew that she would be required to stay home for ten days again, claimant did not to work that day.

(6) On or after February 8, 2021, claimant picked up her paycheck from the employer (the staffing agency). At that time, claimant asked one of the staffers there if they had any suggestions for her problem of being sent home for ten days every time she experienced pregnancy symptoms. The staffer did not offer any solutions. Claimant decided not to return to work for the client because of the employer's COVID-19 policy.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Claimant voluntarily quit work due to the client's policy of requiring anybody who exhibited COVID-19-like symptoms to stay home for ten days without pay. This policy required claimant to miss significant amounts of work and, as a result, lose out on wages because her pregnancy symptoms were similar to some symptoms of COVID-19. The order under review concluded that this did not constitute good cause for voluntarily quitting work because "[c]laimant could have continued working for the employer even if it meant being sent home without pay for (10) days, and only quit when she had found another job." Order No. 22-UI-210374 at 2. The record does not support this conclusion.

First, the record shows that claimant's circumstances were grave. It is not clear from the record why the client required a person known to be pregnant, and whose symptoms of illness were known to be caused by pregnancy, rather than COVID-19, to stay home from work without pay when they posed no threat of COVID-19 transmission. As a preliminary matter, it is unclear that the policy, as applied to claimant, a pregnant person, was legal. This policy essentially made it impossible for claimant to regularly work and earn wages while she was pregnant. A reasonable and prudent person in claimant's circumstances,

whose symptoms were not caused by an infection that could be passed on to others, would not continue to work for an employer (or client thereof) whose policy regularly and unnecessarily kept them from working and earning wages.

Further, claimant had no reasonable alternative but to quit. The record shows that claimant attempted to address the issue with both her supervisor at the client's site and with the employer, but was unable to find any help. No other reasonable alternatives to quitting are evident on this record. To the extent that claimant could have continued working, despite being sent home without pay, until she found other work, the Court of Appeals has held that continuing to work does not constitute a reasonable alternative to quitting. *See Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep't.*, 256 Or App 682, 303 P3d 957 (2013).

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

DECISION: Order No. 22-UI-210374 is set aside, as outlined above.

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

DATE of Service: March 3, 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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