

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0136

Reversed & Remanded

PROCEDURAL HISTORY: On April 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 152802). The employer filed a timely request for hearing. On January 3, 2023, ALJ Passmore conducted a hearing, and on January 5, 2023 issued Order No. 23-UI-211717, reversing decision # 152802 by concluding that claimant voluntarily left work without good cause and was therefore disqualified from receiving benefits effective March 21, 2021. On January 23, 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).

The parties may offer new information, such as the medical provider statements submitted with claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Anderson Towing & Recovery employed claimant as a dispatch operator from August 10, 2020 until March 23, 2021.

(2) When claimant accepted the job, she informed the employer that she suffered from stress-related migraines. She continued treatment for this condition during her employment and occasionally missed work because of it.

(3) Claimant witnessed what she considered to be the employer's owner "verbally abusing" several different employees on several occasions during her employment. Transcript at 5. This caused stress that

exacerbated claimant's medical condition. One of claimant's doctors advised her to seek other work because of this situation.

(4) On March 22, 2021, claimant witnessed what she believed was the employer "berating" a coworker, who was claimant's cousin, over a mistake the coworker made. Transcript at 5. Upset by this, claimant abruptly left work and did not return.

(5) On March 23, 2021, claimant submitted a letter of resignation and did not work for the employer again. The letter stated claimant was quitting due to "migraines and the stress of the job" and cited the employer's owner treating the employees poorly in creating "the most negative work environment." Transcript at 10-11.

CONCLUSIONS AND REASONS: Order No. 23-UI-211717 is set aside and the matter remanded for further development of the record to determine whether claimant had good cause to quit work.

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 suffered from stress-induced migraines. Claimant's condition constituted 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.

Claimant voluntarily quit working for the employer because she felt that the owner verbally abused others in her presence, exacerbating her medical condition. The order under review concluded that claimant did not face a grave situation because the employer's treatment of her coworker during the final incident was not "outright hostile," and claimant did not seek reasonable alternatives to leaving. Order No. 23-UI-211717 at 3. The record does not support these conclusions.

Claimant requested a postponement prior to the day of the hearing, and again at the start of the hearing, in order to obtain and submit medical records regarding her impairment. Audio Record at 8:45 to 9:25. She testified she received the Notice of Hearing on December 29, 2022, one business day prior to the hearing. Audio Record at 9:40 to 10:02. The request for postponement was denied for lack of good cause because decision # 152802 was issued in April 2021, which was "so long ago that there was plenty of opportunity for [claimant] to consult with [her] doctor before the Notice of Hearing." Audio Record at 10:06 to 10:42. However, as the hearing was held at the request of the employer on an administrative decision favorable to claimant, claimant had no reason to believe that she would be a party to a hearing affecting her claim nearly two years later, until she received the Notice of Hearing. She therefore demonstrated good cause for the postponement. The postponement would have allowed claimant to obtain and present evidence of her medical history and work-related complaints to her medical providers, which also could have served to refresh her recollection of these matters prior to

testifying. These topics were not fully developed in the record, in part because the postponement request was denied. Claimant has therefore shown she was prejudiced by the denial of her request for a postponement. On remand, the parties must be afforded the opportunity to submit any additional relevant evidence.

Claimant testified she was advised by her doctor to leave the employment and seek other work due to the effect of the work environment on her medical condition. Transcript at 24. Accordingly, claimant's observations about the work environment are essential to determining the gravity of the situation she faced. Claimant testified that the final incident that caused her to quit work when she did was witnessing the owner berate her coworker. Transcript at 5. However, claimant contended that the owner's conduct that day was part of a pattern of behavior by the owner which exacerbated her medical condition over the course of her employment, such that she sought medical treatment in the months leading up to the final incident. Transcript at 5, 23. While claimant could not recall the specific dates of the incidents preceding the final incident, it can be inferred from the record that claimant was prepared to testify about the substance of those incidents. Transcript at 6. The record must be further developed as to the owner's conduct during these incidents in order to determine the gravity of the situation that claimant faced when she quit work.

Moreover, the record should be further developed as to the extent of claimant's impairment. The differing testimony between claimant and the employer's witnesses regarding how they viewed events at the workplace suggests that claimant may have perceived the work environment differently than her coworkers and the employer due to claimant's impairment. It is therefore important that evidence of claimant's impairment and the impact of the work environment on it be fully developed in order to conduct the analysis required by OAR 471-030-0038(4). By way of example, even if the owner's conduct during the final incident might not be considered "outright hostile" by an individual *without* an impairment such as claimant's, a person with the characteristics and qualities of an individual *with* such an impairment might nevertheless have been affected by this conduct to the extent it constituted a reason of such gravity that they would have left work.

Further development of the record is also needed into whether reasonable alternatives to quitting would have been futile. As the owner's actions gave rise to the situation that caused claimant to quit, claimant may reasonably have felt that any attempts to address her concerns with employees subordinate to the owner, or with the owner himself, would have been futile. If an issue regarding the futility or fruitlessness of an alternative is raised in the record, it must be resolved before concluding that claimant did not have good cause to quit work. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). On remand, inquiry should be made as to whether it would have been reasonable for claimant to expect the owner's conduct to have changed if claimant explained to him how it affected her, or if complaining to another person in authority at the business would have likely yielded sufficient changes in the work environment to allow claimant to continue working despite her impairment.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because

further development of the record is necessary for a determination of whether claimant had good cause to voluntarily quit work. Order No. 23-UI-211717 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-211717 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 21, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-211717 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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