

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0143

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective February 16, 2020 (decision # 132612). Claimant filed a timely request for hearing. On January 4, 2023, ALJ Lewis conducted a hearing, and on January 5, 2023 issued Order No. 23-UI-211793, affirming decision # 132612. On January 25, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Don Nunamaker Inc. employed claimant as a property management assistant from January 8, 2020 until February 20, 2020. Claimant's duties involved showing rental properties to prospective customers. If an employee was uncomfortable showing a particular property alone, the employee could request that the employer send an additional employee and the employer would attempt to accommodate that request.

(2) In approximately 2019, claimant began to suffer from a "trauma disorder" caused by events she had experienced. Transcript at 10. Claimant did not expect this condition to affect her work with the employer when she accepted the job.

(3) On approximately February 19, 2020, claimant had arranged to show a property to a female customer. Instead of that customer appearing for the showing as anticipated, the customer's boyfriend and a male friend appeared at the property. The men approached the back door of the rental dressed in

black “hoodies.” Transcript at 9. This unexpectedly triggered a severe reaction in claimant due to her trauma disorder. Claimant experienced disruptions to eating and sleeping and suffered panic attacks. Claimant concluded that she could not continue in the employment because of the possibility of her condition being triggered in the future by coming into contact with male customers or others unknown to her while showing properties alone.

(4) On February 20, 2020, claimant voluntarily quit working for the employer because of the situation the previous day affecting her mental health and due to her fear that the situation might happen again. In her resignation email, claimant stated that she was quitting because she had a flat tire, and because she did not feel her compensation was adequate given the expense of required travel, lack of health insurance, and need for additional income, which had prompted her to seek a pay advance the week prior. Transcript at 21, 34. Claimant did not tell the employer about her health condition and the impact of showing properties alone on her condition because she was embarrassed and thought that others knowing about her condition might jeopardize her prospects of employment elsewhere.

(5) The employer had no alternate positions available to claimant that did not involve showing properties at the time claimant quit. The employer employed four people in it property management.

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). Claimant was diagnosed with a trauma condition for which she had been treated since 2019, constituting 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 record shows conflicting evidence as to why claimant quit working for the employer when she did. The employer testified that claimant cited dissatisfaction with compensation and financial hardship in her resignation letter. Transcript at 21. The employer felt those stated reasons were accurate because claimant had requested an advance on her pay within approximately a week of her resignation. Transcript at 34. However, claimant testified that after the incident of February 19, 2020, where unexpectedly encountering male customers while alone at a property triggered a “debilitating” reaction because of her trauma disorder, claimant voluntarily quit. Transcript at 8. While claimant did not disclose her mental health condition to the employer and cited different reasons to them for quitting, claimant testified at hearing that she was embarrassed and did not “want [the employer] to know what was going on with [her] mentally.” Transcript at 31. More likely than not, the effect of claimant’s mental health condition on her ability to work for the employer was claimant’s true reason for quitting when she did, despite what she told the employer in her resignation email.

Claimant voluntarily quit working for the employer because she believed that continuing to show properties alone would further exacerbate her mental health condition. The order under review concluded that claimant faced a grave situation because the prospect of showing properties alone could adversely affect her mental health condition. Order No. 23-UI-211793 at 3. The record supports this conclusion. However, the order under review also concluded that claimant did not have good cause for quitting because reasonable alternatives to quitting were available, including filing “a protection order,” disclosing her mental health condition to the employer, or requesting accommodations. Order No. 23-UI-211793 at 3. The record does not support this conclusion.

Claimant testified that she could not return to work after the February 19, 2020 incident because she was too fearful of the situation occurring again. Transcript at 14-15. Because of the incident, claimant experienced disruptions to eating and sleeping and suffered panic attacks. Under these circumstances, claimant faced a situation of such gravity that no reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would have continued to work for their employer.

Further, claimant did not have reasonable alternatives to leaving work. The employer stated that if an employee did not feel comfortable showing a particular property on their own, that they would have made accommodations for that employee by sending a second employee to accompany them at that showing. Transcript at 23. However, the employer stated that no employee had ever requested to be accompanied at every showing, and making that accommodation could “potentially” be a burden to the employer. Transcript at 26-27. Because the situation claimant feared involved unexpectedly coming into contact with male persons while alone, the employer would have had to send a second employee every time claimant went to show a property in order to preclude the possibility of that situation happening again. In such a scenario, it is unlikely that the employer could send another employee to accompany claimant at every showing when that employee alone would be capable of performing the showing, because it would render claimant’s employment unnecessary. Additionally, there were no alternate positions available to claimant that did not involve showing properties at the time claimant quit. Therefore, it is unlikely that claimant’s disclosure to the employer of her mental health condition would have resulted in accommodations that would have allowed claimant to continue working. Moreover, the record does not demonstrate how seeking a “protection order” would have improved claimant’s situation, nor against whom such an order could have been sought. Accordingly, claimant did not have reasonable alternatives to quitting.

For these reasons, claimant voluntarily quit work with good cause. She is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 23-UI-211793 is set aside, as outlined above.

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

DATE of Service: March 28, 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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