

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0361

Reversed
Late Request for Hearing Allowed
No Disqualification

PROCEDURAL HISTORY: On December 1, 2020, 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 benefits effective May 17, 2020 (decision # 141812). On December 21, 2020, decision # 141812 became final without claimant having filed a request for hearing. On December 27, 2021 claimant filed a late request for hearing. On February 21, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 2, 2023 to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 141812. On March 2, 2023, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on March 10, 2023 issued Order No. 23-UI-218721, dismissing claimant's request for hearing as late without good cause.¹ On March 23, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Apple One Employment Service employed claimant as a branch manager from November 2015 until May 25, 2020.

(2) Claimant was diagnosed with anxiety and hypertension. Transcript at 41. The effects of these ailments got worse in stressful situations and was exacerbated by the demands of claimant's employment. Claimant was prescribed medication to mitigate the effects of both diagnoses.

(3) In October 2019, claimant began to feel faint while she was working. She went to a clinic, where they tested her blood pressure, which was 195/120. Transcript at 40. This was abnormally high for claimant, and given her hypertension, was particularly concerning to her and her physician.

(4) Claimant continued to experience significant stress from the demands of her employment. She discussed the effects of this stress with her direct supervisor. This supervisor agreed to perform some of

¹ Despite dismissing claimant's request for hearing as late without good cause, the hearing also addressed the merits of decision # 141812. However, Order No. 23-UI-218721 did not make any conclusions regarding the work separation.

claimant's current duties, in hopes that this would alleviate the stress caused from claimant's work. Transcript at 45. However, claimant still needed to perform direct sales duties that continued to cause her stress.

(5) On March 13, 2020, claimant again met with her physician regarding the effects that the stress from work was having on her hypertension and anxiety. Claimant's physician recommended that she work from home, prescribed her an additional blood pressure medication, and wrote a referral for counseling. Transcript at 38-39. Though claimant's physician did not directly recommend quitting her job, they stated, "[Y]ou're going to have a heart attack. You – you need to stop." Transcript at 46. Claimant did not seek formal counseling, but instead met with a member of her church that assisted members of the congregation with counseling needs.

(6) On May 25, 2020, claimant sent her direct supervisor a message resigning her position with immediate effect.

(7) On December 21, 2020, claimant printed a letter requesting a hearing decision # 141812, went to a local copy store, and faxed it to the Department. The Department has no record of receiving this submission.

(8) On December 27, 2021, claimant submitted a question via the Department's website, inquiring as to the status of her December 21, 2020, request for hearing. She then learned that the Department did not have record of her initial request for hearing.

CONCLUSION AND REASONS: Claimant's request for hearing is allowed. Claimant voluntarily quit work with good cause.

Late request for hearing. ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

The order under review concluded that claimant did not file a timely appeal because the "preponderance of the evidence in the record did not show that claimant took reasonable steps to file her appeal on time." Order No. 23-UI-218721 at 3. The record does not support this conclusion.

Claimant testified that she submitted a timely request for hearing to the Department on December 21, 2020. Transcript at 15. On this date, claimant typed a letter requesting an appeal and faxed it to the Department. Claimant submitted into evidence a copy of the December 21, 2020 letter, but did not have a copy of the confirmation that the fax had been sent or a receipt from the store where it was faxed. Exhibit 1 at 2. The Department representative testified that the Department did not have any records of receiving a fax from claimant. Transcript at 26. Claimant's testimony and corroborating notes show that claimant likely faxed a timely request for hearing to the Department on December 21, 2020.

Further, even if claimant's December 21, 2020 request was not properly sent or received, claimant has shown that she had good cause for filing her late request for hearing on December 27, 2021. Any request for hearing on decision # 141812 had to be made by December 21, 2020 to be timely. Claimant's December 27, 2021 request for hearing therefore was filed late. However, claimant reasonably believed that she had already submitted a request for hearing on December 21, 2020. The record does not show that claimant received an error message, a failure to deliver, or response message of any kind following her December 21, 2020 fax. Given these facts, it was reasonable for claimant to believe that her request for hearing had been successfully submitted on December 21, 2020. Therefore, claimant's lack of knowledge that the Department had not received her fax was a circumstance outside of claimant's reasonable control.

Further, claimant's December 27, 2021 request for hearing was filed within a reasonable time after the circumstance that prevented her from timely filing ceased. Claimant's lack of knowledge regarding the initial fax did not end until claimant reached out to the Department to determine the status of her request for a hearing. This occurred on December 27, 2021, the same day claimant filed her late request for hearing, and therefore was within a seven day "reasonable time" after the circumstances that prevented her from timely filing ceased. Accordingly, claimant has shown good cause to extend the deadline for timely filing her request for hearing to December 27, 2021, and the request for hearing is allowed.

Voluntary leaving. 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 anxiety and hypertension, 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 did not reach the merits of decision # 141812, because it found that claimant's request was late without good cause. However, as noted above, claimant's request for hearing was timely. Additionally, the record shows that claimant quit work with good cause.

The record shows that claimant faced a grave situation when she quit work for the employer due to her health. Claimant quit work because of concern for her health given the worsening symptoms of her anxiety and hypertension. When claimant met with a physician in October 2019, her blood pressure was significantly higher than her baseline, and she and her physician were very concerned about this increase. Claimant, with her supervisor's approval, adjusted her duties but did not see an improvement in her health. In March 2020, claimant's physician recommended that she begin to work from home and prescribed her an additional blood pressure medication. At this point, her doctor advised her, "[Y]ou're going to have a heart attack. You – you need to stop." Transcript at 46. Given the effects of the work on claimant's health, as well as the recommendations from her physician, a reasonable and prudent person with the characteristics and qualities of an individual with impairments such as claimant's would have found the situation of sufficient gravity as to necessitate leaving work.

Further, the record shows that claimant did not have a reasonable alternative to quitting. Prior to quitting, claimant had discussed her worsening health conditions with her supervisor. Her supervisor attempted to address this by completing some of claimant's duties, but claimant was still required to complete the duties that were aggravating her impairments. While claimant did not seek a leave of absence, she testified that a leave of absence would have been unpaid. Transcript at 63. Given that any leave of absence would have been unpaid, the record does not show that this was a reasonable alternative to leaving work when she did. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"). Additionally, though claimant did not speak with one of the employer's human resources representatives, the record does not show that they would have been able to offer claimant an alternative that would have addressed her concern. The record does not show that the employer had an alternative position that would have accommodated claimant's health issues, and given that claimant's health continued to worsen after the employer attempted to adjust her duties, the record does not show that further adjusting claimant's duties would address the situation.

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

DECISION: Order No. 23-UI-218721 is set aside, as outlined above.

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

DATE of Service: May 5, 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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