

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0840

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 15, 2023, 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 October 9, 2022 (decision # 143118). Claimant filed a timely request for hearing. On July 10, 2023, ALJ Fraser conducted a hearing, and on July 11, 2023 issued Order No. 23-UI-229958, affirming decision # 143118. On July 31, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Canby School District #86 employed claimant as a teacher of preschool-aged children with special needs from October 2019 until October 14, 2023.

(2) Beginning in March 2022, claimant began suffering from mental health difficulties as the result of a divorce. He also injured his left knee and back at that time. Claimant continued to work through the end of the school year without seeking treatment for these issues.

(3) By September 2022, when claimant had returned to work for the new school year, claimant had difficulty sitting, standing up, and physically performing other functions of his job due to his injuries. He also noticed changes in his ability to interact with parents and others. Near the end of September, claimant's mental health condition deteriorated further and he became suicidal.

(4) On October 1, 2022, claimant submitted a resignation to his employer effective October 14, 2022, because he felt his health conditions prevented him from adequately performing his job. In his resignation letter, claimant cited moving from his house as the reason for resigning and did not mention his health conditions. Claimant did not feel comfortable discussing his health conditions with his supervisor or human resources personnel because they were new to their jobs. As a result, claimant did not request accommodations or a leave of absence prior to quitting.

(5) On October 2, 2022, claimant first sought treatment for his knee and back injuries at urgent care. He was diagnosed with myalgia and received medication and physical therapy treatments thereafter.

(6) On October 9, 2022, claimant phoned a mental health crisis hotline operated by his healthcare provider because he was suicidal. He thereafter began to receive mental health treatment and was diagnosed with “adjustment disorder with mixed anxiety and depressed mood.” Transcript at 7.

(7) On October 14, 2022, claimant quit working for the employer as planned. He had not performed work since October 10, 2022 while he received treatment for his conditions.

(8) At the time of claimant’s resignation, the employer could potentially have transferred claimant to another position or provided some accommodations in his current position upon request, or would have granted claimant medical leave. Claimant did not pursue any of these potential alternatives to quitting.

(9) In May 2023, claimant believed that his physical and mental health conditions had improved to the point that he could again perform his work duties as a teacher. He began applying to teaching jobs, and secured a position which he started prior to the end of the 2022-2023 school year.

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 had myalgia and adjustment disorder with mixed anxiety and depressed mood, which were permanent or long-term “physical or mental impairments” 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 that claimant’s impairment, while “not long term or permanent,” presented a grave situation, but that claimant quit work without good cause because he had reasonable alternatives to quitting that he did not pursue. Order No. 23-UI-229958 at 3. The record supports that claimant faced a grave situation. However, it does not support the conclusions that his impairments were not long-term, or that he had reasonable alternatives to quitting.

Claimant voluntarily quit work because he believed he was physically and mentally incapable of performing his job duties. Though claimant did not seek treatment for his health conditions until after he gave notice of his resignation, the conditions had been ongoing and worsening for approximately six months. The conditions ultimately remitted in May 2023, more than a year after they began, and after several months of treatment. Therefore, at the time of claimant’s work separation, claimant suffered from long-term mental and physical impairments.

At hearing, claimant testified that his physical impairments made it “hard” to work with preschoolers and “at work I just couldn’t stand up and sit down.” Transcript at 10-11. He also testified that he “need[ed] to take breaks, so there was some time that I couldn’t work some days . . . I just couldn’t stand the pain.” Transcript at 11. Claimant further testified that as his mental health condition worsened through September 2022, “I wasn’t being the best teacher I could be . . . I could tell I didn’t have it. You know, I was going through a mental health crisis.” Transcript at 23. He added, “I had tears, a lot of tears during that, those days or weeks before [he submitted his resignation], a lot of tears . . . I didn’t talk very much. My smile wasn’t there.” Transcript at 24. For these reasons, claimant concluded that he was no longer capable of performing his job duties. This inability to perform the necessary functions of the work constituted a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with impairments such as claimant’s would not have continued to work for their employer for an additional period of time.

The employer asserted that claimant had alternatives to quitting of requesting a transfer to another position, requesting workplace accommodations such as additional breaks or special furniture, or requesting a leave of absence. Transcript at 30-31. The employer offered testimony that the possibility of a transfer “could [have] been explored,” but that it was “hard to say now what may have been open or what flexibility we would have had in October [2022].” Transcript at 31. It can be inferred that sitting, standing, or interacting with others would likely have been essential functions of any other position the employer may have had available to claimant, and therefore he likely would have faced an inability to perform that work. Similarly, it is unlikely that “different types of furniture” or additional breaks would have permitted claimant to “chase” preschoolers around or adequately interact with them, their parents, and other school personnel, and adequately perform all essential functions of his job. Transcript at 14, 31. While a leave of absence was available to claimant, the record does not establish that he would have been paid for such leave. Given that claimant’s condition had deteriorated over the preceding six months, such leave would have been projected to last for a lengthy or indefinite period. A protracted, unpaid leave of absence is not a “reasonable alternative” to leaving work. *Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980). Further, during the time immediately preceding the work separation, claimant testified that he was suicidal and had made a specific plan to end his life, and after alerting his doctor to this, expected to be committed to a secure mental health facility “for a few weeks.” Transcript at 10, 25. In this state of mind, it can be inferred that claimant lacked the ability to pursue alternatives to quitting even if they might otherwise have been deemed reasonable. Accordingly, the record does not show that claimant could have availed himself of any reasonable alternative to quitting, and quit work with good cause.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits as a result of the work separation.

DECISION: Order No. 23-UI-229958 is set aside, as outlined above.

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

DATE of Service: September 6, 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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