

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0906

Reversed and Remanded

PROCEDURAL HISTORY: On May 9, 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 February 12, 2023 (decision # 115936). Claimant filed a timely request for hearing. On July 19, 2023, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on August 11, 2023 issued Amended Order No. 23-UI-232955, modifying decision # 115936 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective November 13, 2022.¹ On August 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information 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.

¹ Amended Order No. 23-UI-232955 replaced Order No. 23-UI-231261, which had been issued July 24, 2023. Order No. 23-UI-232955 was issued to amend the effective date of the disqualification from November 12, 2022 to November 13, 2022, and was issued by ALJ Mott on behalf of ALJ Amesbury. Further, although Order No. 23-UI-232955 stated that it affirmed decision # 115936, it modified that decision by changing the effective date of the disqualification from February 12, 2023 to November 13, 2022. Order No. 23-UI-232955 at 7.

FINDINGS OF FACT: (1) Met One Instruments, Inc. employed claimant as a marketing director from July 27, 2020 until November 16, 2022.

(2) After an initial period of working in the employer's office near her home, claimant was permitted to work primarily from home, but occasionally reported to the employer's office for work when needed. Claimant expected this remote work arrangement to continue indefinitely.

(3) On July 16, 2022, claimant began a pre-approved period of maternity leave that was scheduled to end in October 2022. Claimant gave birth on August 11, 2022. At claimant's request, claimant's supervisors approved an extension of the maternity leave to November 1, 2022.

(4) While on maternity leave, a co-worker whom claimant considered a "peer" was promoted to human resources manager, and was therefore designated as a supervisor to claimant. Transcript at 22. Claimant felt that this promotion of a peer to be her supervisor constituted claimant being "demoted." Transcript at 22. Also during claimant's leave, the new human resources manager began working on revising the employer's remote work policies as to some positions. As a result, claimant was informed that when she returned from maternity leave, she would be required to work full-time at the office rather than remotely from home. Claimant was upset by this policy change for various reasons, including that she intended to provide care for her newborn child while working from home.

(5) On November 1, 2022, claimant returned to work after the end of her maternity leave. She attended a meeting with the new human resources director and a global marketing director who was also a supervisor to claimant. The purpose of the meeting was to notify claimant of the changes that occurred while she was on leave, particularly with respect to the requirement that she work in-person rather than remotely. Claimant repeatedly challenged the supervisors as to the reason for the policy change and was dissatisfied with their explanations. During the meeting, the supervisors suggested claimant would be unable to care for a newborn while working full-time from home, asked claimant whether she desired accommodations while in the office to express milk, and intimated that claimant being "upset" at the remote work policy change was the result of "raging pregnancy hormones." Transcript at 11. Claimant believed that this policy change and being "demoted" while on maternity leave were the result of unlawful discrimination on the basis of sex.

(6) On November 10, 2022, claimant sent an email to several supervisors, including the human resources manager, making a "formal discrimination complaint" via email against the two supervisors involved in the November 1, 2022 meeting. Transcript at 25. The human resources manager promptly replied that that she "would look into it." Transcript at 26. Claimant felt that this response on behalf of the employer was inadequate given that the human resources manager was a subject of the complaint.

(7) On November 15, 2022, claimant contacted a co-worker in the employer's Australia branch to inquire whether he or other members of management were investigating her complaint. That co-worker was unaware of the complaint but told claimant he would apprise a higher-level manager of the complaint, and later did so.

(8) On November 16, 2022, claimant submitted a letter of resignation to the employer with immediate effect because she felt that the employer was not promptly responding to her complaint and that the complaint would not be resolved to her satisfaction.

(9) On November 18, 2022, a supervisor who was not a subject of claimant's complaint wrote a letter, which was hand-delivered to claimant that day, stating that an investigation was being conducted into her complaint and requesting that she "pause" her resignation and remain employed on paid administrative leave while the investigation was conducted. Transcript at 32. Claimant did not immediately see the letter because it was enclosed with a copy of her personnel file that she had requested and did not open.

(10) On November 24, 2022, claimant read the letter and, after calling the employer, discovered that she had been on paid administrative leave since November 17, 2022. Claimant had not performed any work for the employer since November 16, 2022.

(11) On February 15, 2023, a separation agreement that had been reached between claimant and the employer resulted in a second resignation by claimant becoming effective. Claimant was no longer employed by the employer after this date per the terms of the agreement.

CONCLUSIONS AND REASONS: Order No. 23-UI-232955 is set aside and the matter remanded for further proceedings.

Effective date of work separation. If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

"Work" means the continuing relationship between an employer and employee. OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a). The relevant period to analyze when determining good cause includes the time between which claimant gave notice and the final day claimant worked. *See Constantine v. Employment Dept.*, 200 Or App 677, 117 P3d 279 (2005); *Ponder v. Employment Dept.*, 171 Or App 435, 448, 15 P3d 602 (2000).

The order under review concluded that claimant separated from work on November 16, 2022. Order No. 23-UI-232955 at 6. The record does not support this conclusion and suggests that the separation occurred at a later date. Further development of the record is needed to determine the date on which claimant separated from work.

Claimant submitted a letter of resignation to the employer on November 16, 2022, which stated that it was to have immediate effect. The employer, however, placed claimant on paid administrative leave effective the following day, and on November 18, 2022, delivered a letter to her asking her to "pause" her resignation and remain on paid administrative leave pending the outcome of an investigation into a complaint she made on November 10, 2022. Claimant was unaware of this and did not read the letter until November 24, 2022, after being told during a phone call to the employer that she was on paid administrative leave. The record is unclear as to how long the paid administrative leave continued, but suggests that it may have been as late as February 15, 2023, when claimant testified she submitted a second resignation. Transcript at 35. As the employer-employee relationship could not have been severed while claimant remained on paid administrative leave, further development of the record is

needed to determine when that leave ended, which, if claimant had no further relationship with the employer, was the date that claimant separated from work. On remand, the ALJ should specifically ask when the paid administrative leave began and when it ended.

Voluntary quit. 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). “[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.

The order under review concluded that claimant quit without good cause because she did not face a grave situation with regard to her complaint of discrimination at the time of her November 16, 2022 resignation, since the employer was investigating the complaint and claimant did not avail herself of the reasonable alternative of remaining on paid administrative leave while the investigation was pending. Order No. 23-UI-232955 at 6-7. Because this analysis focused on the period immediately preceding claimant’s November 16, 2022 resignation letter rather than the period immediately preceding claimant’s separation from employment, the record as presently constituted does not support these conclusions, and further development of the record is needed.

The record suggests that despite claimant initially submitting her resignation on November 16, 2022 and performing no job tasks for the employer after that date, she may not have stopped working, as the term “work” is defined in OAR 471-030-0038(1)(a), until February 15, 2023. If the employer-employee relationship continued during this time, the relevant period for determining good cause is the period between November 16, 2022 and February 15, 2023.

When claimant submitted her initial resignation on November 16, 2022, the record suggests that she did so because she believed the employer was not promptly addressing her November 10, 2022 complaint and she did not believe that the complaint would be resolved to her satisfaction. The crux of the complaint was that claimant was being required to return to in-person work in November 2022, and claimant believed that this requirement was imposed as a result of unlawful discrimination. The record details the circumstances which led claimant to form this belief. One such circumstance was that one of the people behind this policy change was promoted to their leadership position while claimant was on maternity leave, and claimant felt this person was less qualified for a leadership position than claimant, causing claimant to feel that she had been demoted despite no change to claimant’s position or salary. The other circumstance involved comments made by claimant’s superiors regarding parenting responsibilities and suppositions about her health due to having recently given birth. These circumstances were described to the employer in claimant’s November 10, 2022 complaint, and the employer, through their human resources manager, responded that they were looking into the complaint and ultimately placed her on paid administrative leave while it was investigated. The record as presently constituted shows that, as of November 16, 2022, these circumstances did not constitute a grave situation because claimant had not allowed sufficient time for the employer to investigate and remedy the complaint, and, as claimant would later learn, the employer apparently rejected this resignation and

placed claimant on paid administrative leave, resolving the issues that had prompted claimant to tender this resignation, at least temporarily, while continuing to employ claimant.

However, the good cause analysis must focus not exclusively on the circumstances that led to the November 16, 2022 resignation that the employer apparently rejected, but on the circumstances that led to claimant actually severing the employment relationship, which appears to have happened on February 15, 2023. The record as presently constituted contains little evidence as to whether claimant faced a grave situation as of February 15, 2023. A separation agreement was apparently reached between the parties sometime on or before this date, and resulted in claimant's resignation taking effect on February 15, 2023. The record is unclear as to whether claimant was offered the opportunity to return from administrative leave and continue working for the employer as an alternative to accepting this agreement, and if so, on what terms claimant could have returned to work. The record is therefore in need of further development as to the circumstances leading to her second resignation.

On remand, inquiry should be made into whether the employer gave claimant the option to return to work from administrative leave and, if so, whether that work would be remote or in-person; why claimant accepted the separation agreement rather than return to work, if she had that option; and whether the circumstances that caused claimant to accept the separation agreement rather than return to work, if she had that option, were of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period of time. If claimant faced such a grave situation, further inquiry should be made into whether reasonable alternatives to accepting the separation agreement were available.

The record also contains little evidence as to whether the employer took sufficient action to resolve claimant's complaint by February 15, 2023. Claimant suggested that the planned investigation by the employer into her complaint was not conducted after claimant hired an attorney in response to the employer hiring an attorney to independently conduct the investigation. Transcript at 34. The mere fact that claimant retained an attorney does not imply that she impeded the employer's investigation. However, if claimant failed to cooperate with the investigation and thereby prevented it from going forward, or impeded the employer in resolving the complaint, the employer's failures to investigate or resolve the complaint may not have constituted a grave situation. Further development of the record as to this issue is therefore needed.

On remand, inquiry should be made into whether claimant quit working for the employer on February 15, 2023 because the employer subjected her to unlawful discrimination and failed to adequately remedy such unlawful discrimination and, if so, whether claimant's deliberate actions prevented the employer from remedying the unlawful discrimination when brought to their attention. Additionally, inquiry should be made into whether these circumstances were of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period of time. If claimant faced a grave situation as a result of these circumstances, further inquiry should be made into whether reasonable alternatives to quitting that could have remedied any unlawful discrimination were available.

Moreover, regardless of whether the in-person work requirement was implemented as a result of unlawful discrimination, the record suggests that further development of the record is needed to determine whether the requirement itself may have posed a grave situation to claimant in terms of the need for childcare. Claimant testified that, when told of this requirement, claimant requested that the

employer delay implementation of it until her child was six months old, at which time claimant “would be able to do it [return to in-person work.]” Transcript at 19. Claimant testified that childcare was needed if claimant could not work from home because she did not “have any family here,” and she was unable to secure childcare prior to the child being six months old because the waitlist for care was “about three months long.” Transcript at 18. Claimant also testified that she would not enroll the child in childcare, even if available, until the age of six months due to concerns about COVID-19. Transcript at 18-19. If claimant was unable to comply with the in-person work requirement due to the need to provide childcare as of February 15, 2023, and quit work for this reason, this may have constituted a grave situation. However, as the child had reached the age of six months by February 15, 2023, it is unclear what the circumstances were regarding claimant’s need for childcare, including whether other familial caretakers might have been available at that time. Further development of the record as to this issue is therefore needed.

On remand, inquiry should be made into whether childcare issues prevented claimant from continuing to work for the employer on or after the separation date and, if so, whether this was a circumstance of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period of time. If claimant faced a grave situation as a result of these circumstances, further inquiry should be made into whether reasonable alternatives to quitting for this reason were available.

For these reasons, Order No. 23-UI-232955 is set aside, and the matter remanded for further development of the record to determine the date of work separation and whether claimant voluntarily quit work with good cause.

DECISION: Order No. 23-UI-232955 is set aside and the matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 28, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-232955 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.

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