

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0967

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 30, 2023, 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 June 9, 2023 (decision # 123416). Claimant filed a timely request for hearing. On August 8, 2023, ALJ Messecar conducted a hearing, and on August 16, 2023, issued Order No. 23-UI-233438, affirming decision # 123416. On August 25, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted two written arguments, one uploaded via EAB's online portal on August 28, 2023, and another faxed to EAB on August 31, 2023. EAB did not consider claimant's August 31, 2023, 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 or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's August 28, 2023, 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, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's August 28, 2023, argument to the extent it was based on the record.

FINDINGS OF FACT: (1) STA of Oregon employed claimant as a school bus driver from May 25, 2022, until June 9, 2023. The employer provided school bus services for school districts, including the Tigard and Newberg, Oregon school districts.

(2) Claimant suffered from benign tumors located in her lower abdomen and uterus, which drained claimant's energy and disrupted her sleep. Claimant was diagnosed with the tumors in 2017 following an incident in which the tumors caused her to faint before embarking on a bus route for a previous employer. In 2020, claimant underwent a small-incision laparoscopic surgery to address the tumors, but the surgery did not eliminate them.

(3) In December 2022, claimant transferred from the employer's Tigard location to the employer's Newberg location. In April 2023, the employer announced to their employees that their Newberg location was closing and that the last day for drivers to operate their routes would be June 15, 2023. The employer advised that it was possible for drivers at the Newberg location to continue to work by transferring to the employer's other locations, such as the Tigard location.

(4) By May 2023, claimant's tumors were causing her to experience sleep deprivation such that some nights she slept only three hours per night. Claimant sought medical attention from conventional and holistic doctors. She was prescribed sleeping pills, took magnesium and melatonin, and drank sleep-inducing tea to address the sleep deprivation, but her lack of sleep persisted. Claimant discussed with her doctor the possibility of undergoing large-incision surgery on the tumors, but her doctor told her that such a surgery could not be scheduled until November or December 2023.

(5) The sleep deprivation affected claimant's alertness and reaction time on the job during her morning routes, and claimant was concerned it could create a safety risk for the students who rode her bus in the morning. The sleep deprivation also negatively affected claimant's immune system, and by the end of May claimant was generally ill and was coughing and throwing up regularly. During this same timeframe, claimant was in a minor accident while driving her bus, which she attributed to lack of alertness from the sleep deprivation.

(6) On or about June 1, 2023, claimant asked her operations manager for a medical leave of absence. The manager told claimant that because the employer was closing their Newberg location on June 15, 2023, the employer would not approve a medical leave. However, the manager agreed to try to find other drivers to cover claimant's morning route and allow claimant to drive only her afternoon route.

(7) For about a week thereafter, claimant's manager had other workers cover claimant's morning route. However, on June 9, 2023, the manager determined that no one was available to cover claimant's morning routes for her last four shifts of Monday June 12 through Thursday June 15, 2023.

(8) On June 9, 2023, the manager informed claimant that there was no one to cover her morning routes for her last four shifts of June 12 through 15, 2023. Claimant asked her manager what her options were. The manager advised that claimant could drive the morning route for her last four shifts, or she could resign.

(9) On June 9, 2023, claimant sent the employer an email resigning effective that day. Claimant resigned because she was concerned that the sleep deprivation caused by her tumors created a safety risk for the students who rode her bus in the morning. Claimant also resigned because she considered bus driving to be a stressful job, and thought lower stress levels would enable her body to better manage her tumor condition, and because claimant anticipated moving to California, where she could live with her mother and undergo the large incision-surgery on the tumors.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 tumors in her lower abdomen and uterus, 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 concluded that claimant voluntarily left work without good cause because she failed to pursue the alternative of seeing how she slept the night before, and calling out sick if she judged herself unsafe to drive. Order No. 23-UI-233438 at 3. The record does not support this conclusion.

The main reason claimant resigned on June 9, 2023, was that her manager told her she could either drive the morning route for her last four shifts or resign, and claimant was concerned that if she drove her morning routes, the sleep deprivation caused by her tumors would create a safety risk for the students who rode her bus. Claimant met her burden to establish that this reason constituted good cause to quit.

Claimant faced a grave situation. Claimant had benign tumors located in her lower abdomen and uterus. The tumors had the effect of draining claimant’s energy and disrupting her sleep. By May 2023, claimant’s tumors were causing her to experience sleep deprivation such that some nights she slept only three hours per night. The sleep deprivation affected claimant’s alertness and reaction time on the job during her morning routes. Claimant’s concern that the sleep deprivation posed a safety risk for the students who rode her bus was reasonable given that in 2017, the tumors caused her to faint before going on a bus route, and in May 2023 claimant was in a minor accident while driving her bus, which she attributed to lack of alertness from the sleep deprivation.

Claimant pursued reasonable alternatives to quitting without success. Claimant had undergone small incision laparoscopic surgery to address the tumors, but the surgery did not eliminate them. Claimant sought medical attention from conventional and holistic doctors. She was prescribed sleeping pills, took magnesium and melatonin, and drank sleep-inducing tea to address the sleep deprivation but her tumor-caused lack of sleep persisted. In May 2023, claimant discussed with her doctor undergoing large incision surgery on the tumors. However, the doctor informed her that there would be a delay until November or December 2023 before such a surgery could be scheduled. Claimant requested a medical leave of absence. However, claimant’s manager told claimant that the employer would not approve a medical leave.

In April 2023, at the time the employer announced the impending June 15, 2023, closure of the Newberg location, they advised that transferring to the employer’s other locations was possible. However, the employer offered this option as a means for drivers to continue working who otherwise would face a lack of work because of the impending Newberg location closure. In claimant’s case, transferring to another location would have been futile because, more likely than not, claimant would still have been expected to drive morning routes at the employer’s other locations and would therefore still be presented with a grave situation. It similarly would have been fruitless for claimant to simply see how she slept the night before her shift and call out sick if she thought it was unsafe to drive. This would have posed an

unacceptable risk that claimant might have misjudged herself as sufficiently alert to drive and not call out, only to discover after beginning a route that her reaction time and alertness were not sufficient to safely drive.

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

DECISION: Order No. 23-UI-233438 is set aside, as outlined above.

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

DATE of Service: October 11, 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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