

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1095

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 23, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 30, 2023 (decision # 153414). Claimant filed a timely request for hearing. On September 26, 2023, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on September 29, 2023 issued Order No. 23-UI-237288, affirming decision # 153414. On October 4, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant was an in-home assistant who performed work for clients under a governmental program, Home Care Workers (HCW), in which HCW served as the employer of record for individuals, like claimant, who performed services for HCW clients. Under the HCW program, claimant would perform in-home caregiving work for a client, and that client was claimant's employer. However, claimant was paid for her work by HCW and used their client registry to find clients. Claimant began performing services for HCW clients in June 1996, and worked for various HCW clients over the years.

(2) HCW provided a different in-home care assistant, L.S., as a point of contact person for claimant who was available for claimant to "talk to" if she "ha[d] a problem" with anything related to the HCW program. Transcript at 17.

(3) Claimant had mild emphysema and had trouble breathing around cigarette smoke. Inhaling cigarette smoke could make claimant feel like her lungs were closing or collapsing. In or around 2018, claimant was prescribed an inhaler, which treated her emphysema symptoms.

(4) On April 27, 2023, claimant had an interview with a prospective HCW client. The client lived in a 20-foot long trailer on her mother's property. The client's mother lived in a house located on the same property, but she was not present for the interview. During the interview, the client was smoking a cigarette. The client put out the cigarette and asked claimant if cigarette smoke bothered her. Claimant

responded, “sort of.” Transcript at 30. The client then stated that she would go outside to smoke when claimant was present. At the conclusion of the interview, claimant agreed to work for the client.

(5) On May 1, 2023, claimant went to the client’s trailer for her first day of work. Shortly after she arrived, the client’s mother came over. The client and her mother then started smoking cigarettes inside the trailer. Over the course of an hour, the client and her mother each smoked multiple cigarettes and the trailer became full of smoke. The smoke caused claimant to have significant breathing difficulties. Claimant asked if she could open a window but the client refused to allow her to do so, stating that her cats would get out if a window was opened. After an hour, claimant stated “I’m going to go now,” left the trailer, went to her car and used her inhaler, and never worked for the client again. Transcript at 32.

(6) Claimant never worked for the client again because the client and her mother smoked inside the trailer, claimant believed the client’s mother would be present “all the time,” and claimant viewed her health as “more important than sitting in a bunch of smoke.” Transcript at 36.

(7) Prior to departing the trailer, claimant did not inform the client or the client’s mother that she had emphysema. Claimant also did not remind the client that cigarette smoke bothered her or remind the client that she had agreed to smoke outside of the trailer when claimant was present. Claimant also did not contact L.S. to seek L.S.’s assistance in requiring or persuading the client and her mother to stop smoking cigarettes in claimant’s presence.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of the Work Separation. If the 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). In the case of individuals working for . . . governmental programs where a state agency serves as the employer of record for individuals performing home care services, the employment relationship “shall be deemed severed at the time that a work assignment ends.” OAR 471-030-0038(1)(a).

The work separation was a voluntary leaving that occurred on May 1, 2023. Claimant was an in-home assistant who performed services for clients under the HCW program. As such, although HCW served as claimant’s employer of record, and provided a registry through which claimant could find other clients, the client was claimant’s employer and claimant’s employment relationship with the client ended when the work assignment ended. Here, the work assignment ended when claimant left the client’s trailer on her first day of work and never worked for the client again. Claimant left the trailer and never worked for the client again because the client and her mother smoked inside the trailer, claimant believed the client’s mother would be present “all the time,” and claimant viewed her health as “more important than sitting in a bunch of smoke.” Transcript at 36. Thus, when claimant ended the work assignment, continuing work for the client was available but claimant was not willing to continue working for the client for an additional period of time. Accordingly, claimant voluntarily quit working for the employer on May 1, 2023.

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). “[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 emphysema, 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.

Claimant voluntarily quit work because her client and the client’s mother smoked inside the client’s trailer, which aggravated claimant’s emphysema. This was a grave situation because inhaling cigarette smoke caused claimant breathing problems and could make her feel like her lungs were closing or collapsing. On May 1, 2023, the client and her mother each smoked multiple cigarettes inside the trailer, filling the trailer with smoke and causing claimant to experience breathing difficulties. Further, when claimant asked to open a window, the client declined to allow her to do so. As claimant was an individual with the permanent impairment of emphysema, the smoky working conditions in the trailer was a grave situation.

However, claimant failed to pursue reasonable alternatives prior to quitting work. Before claimant departed the trailer, claimant did not inform the client or her mother that she had emphysema. Had claimant made the client and her mother aware of her health condition, the two may have ceased smoking around claimant. Claimant also did not remind the client that cigarette smoke bothered her or remind the client that she had agreed to smoke outside of the trailer when claimant was present. Had claimant given the client these reminders, the client and her mother may have smoked outside or otherwise limited their smoking behavior. Claimant also did not contact L.S. to seek L.S.’s assistance in requiring or persuading the client and her mother to stop smoking cigarettes in claimant’s presence. L.S. was a point of contact person for claimant who was available for claimant to “talk to” if she “ha[d] a problem” with anything related to the HCW program. Transcript at 17. Therefore, it is possible that if claimant had informed L.S. of the smoky working conditions in the client’s trailer, L.S. could have either required or persuaded the client to stop or limit cigarette smoking around claimant.

For these reasons, claimant failed to meet her burden to show that her reason for quitting work was of such gravity that she had no reasonable alternative but to leave work when she did. Accordingly, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective April 30, 2023.

DECISION: Order No. 23-UI-237288 is affirmed.

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

DATE of Service: November 13, 2023

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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