

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0423

Modified
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On December 27, 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 October 15, 2023 (decision # 122014). Claimant filed a timely request for hearing. On January 29, 2024, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on January 31, 2024, issued Order No. 24-UI-246944, reversing decision # 122014 by concluding that claimant quit with good cause and was not disqualified from receiving benefits based on the work separation. On February 19, 2020, the employer filed a timely request to reopen the January 29, 2024, hearing. On April 2 and 18, 2024, ALJ Enyinnaya conducted a hearing, and on April 26, 2024, issued Order No. 24-UI-253056, allowing the employer's request to reopen the hearing, canceling Order No. 24-UI-246944, and affirming decision # 122014 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective October 15, 2023. On May 6, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-253056 allowing the employer's request to reopen and concluding that the nature of the work separation was a quit. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-253056 are **adopted**.

FINDINGS OF FACT: (1) Neptune Management Corporation employed claimant as a sales advisor from October 24, 2019, to October 19, 2023.

(2) Claimant had a long-term condition that caused anxiety and panic attacks. Claimant took a prescription medication and saw a counselor for the condition.

(3) Claimant's work for the employer involved selling customers pre-planned cremation services. For claimant to sell the service plans and earn commission she needed to receive from leads the employer on prospective customers who were interested in buying a cremation plan. In June 2023, claimant requested

a transfer into a section of the employer's business in which selling the plans was dependent upon receiving leads as well as conducting seminars for prospective customers. Claimant's manager was responsible for distributing leads among employees.

(4) After transferring, claimant believed that the leads assigned to her were inadequate in quantity and quality compared to what other employees were receiving. Claimant believed that many of the leads were "old" in that they had previously been assigned to other employees, without success, and that such leads would be less likely to lead to sales. The employer assigned claimant all or nearly of their web leads, and the average number of leads claimant received did not differ from that given to other employees.

(5) During August and September 2023, claimant repeatedly requested more and better leads from her manager, with limited response. The manager told claimant that he believed she had been assigned nearly all of leads generated from the internet and that claimant was receiving a fair distribution of the leads. Claimant also complained to the manager of a limited ability to conduct seminars to generate leads due to the requirement that she front the money for her travel and the attendees' lunches, and requested that the employer arrange for her to conduct additional seminars at their expense. Claimant received little or no response to these seminar requests. Claimant constantly questioned her manager via text why she was being treated unfairly regarding receiving leads.

(6) Due to the lack of commission income, which claimant attributed to the problems getting leads and seminars, claimant was forced to move from her house and had difficulty affording a new place to live, as well as affording treatment for her mental health condition.

(7) In mid-to-late September 2023, claimant's anxiety and panic attacks caused her to be hospitalized. Claimant attributed the worsening of this condition to her financial situation and, in turn, blamed the employer for the lack of leads leading to commission earnings. Shortly afterward, claimant was released from the hospital. At the end of September 2023, claimant's manager stopped working for the employer.

(8) On October 2, 2023, the employer replaced claimant's manager. On October 3, 2023, the new manager and claimant had a meeting. Claimant perceived the new manager as being non-committal about when claimant would receive her next seminar and assigning additional leads. On October 13, 2023, the regional manager arranged another meeting with claimant, but claimant missed the meeting. Later, claimant made comments in a group text complaining about the employer, previous managers and employees, and other points of job dissatisfaction. Claimant's new manager felt the texts were unprofessional and scheduled a meeting with claimant and a human resources representative to discuss her performance.

(9) On October 17, 2023, claimant had a meeting with her manager and a human resources coordinator. The manager asked claimant about the text messages, but claimant again spoke about her grievances against prior managers and the distribution of leads. Claimant's manager and the human resources coordinator became concerned about claimant's mental health and the conversation turned to this subject. During the meeting, claimant "had just great anxiety" and "was borderline having a panic attack[.]" April 2, 2024, Transcript at 21. The employer suggested that claimant take "a couple weeks of leave" to improve her mental health, or consider resigning with the possibility of rehire later. Transcript at 19. Claimant did not think that a leave of absence would improve what she believed was the

underlying cause of her financial and mental health problems—the lack of leads and commission earnings—and therefore believed that the employer was not offering an option that would allow her to continue working. Claimant’s manager requested a response by October 19, 2023.

(10) On October 19, 2023, claimant responded to a text from her manager by writing that she was resigning. The employer sent claimant an email that day stating that her resignation had been processed and that they waived two weeks’ notice, which claimant told the employer she had intended to give, and considered the resignation to have immediate effect. Claimant did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant 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 a condition that caused anxiety and panic attacks, 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’s situation was grave but that she failed to pursue reasonable alternatives and therefore quit work without good cause. Order No. 24-UI-253056 at 7. The record does not support that claimant had a reasonable alternative to quitting.

Claimant voluntarily quit work when the employer presented her with what she believed were only two options: resign, or take a leave of absence until her mental health condition improved. Claimant testified that she understood, with respect to these options, that “they didn’t give me the option to stay employed.” April 18, 2024, Transcript at 7. However, claimant’s manager testified that claimant would have been allowed to return to work after a leave of absence, had she taken one. April 18, 2024, Transcript at 24. As there would be no reason for the employer to offer a leave of absence if they did not intend to continue claimant’s employment afterward, it can be inferred that these differing accounts were the result of claimant misunderstanding the employer’s intentions regarding what her employment status would be after taking a leave of absence, and claimant likely could have continued working for the employer after the leave of absence. However, the record shows that claimant faced a grave situation which led to the employer presenting her with these options.

Claimant’s mental health condition, including anxiety and panic attacks for which she received long-term treatment, required her hospitalization in mid-September 2023. The record suggests that claimant’s condition had worsened due to a loss of housing and ability to afford outpatient medical treatment in the preceding months, caused by financial difficulties in the form of significantly decreased commission earnings, which claimant attributed to the employer’s failure to provide adequate sales leads after her transfer. The effect of claimant’s earning ability on her mental health condition was grave.

At hearing, claimant's manager testified that claimant "had received if not all, almost every web lead that was available to [the] location [where claimant worked]." April 18, 2024, Transcript at 27. He further testified that an average of 70-100 leads per employee in claimant's position is "average" and suggested that the leads given to claimant during his tenure as her manager in the first part of October 2023 was consistent with that range. April 18, 2024, Transcript at 41. Claimant disputed that she received this average number of leads in her testimony. Transcript at 38. Similarly, Claimant's previous manager texted claimant on or around September 8, 2023, in response to a text asserting that she had only received 26 leads the prior month, that she had, in fact, received 93 web leads in July 2023 and 81 web leads in August 2023, with very few sales completed. Exhibit 2 at 5. It is reasonable to infer that the lead and sales numbers, at least regarding July and August 2023, were reported from the employer's computerized records, and therefore more reliable than claimant's assertion of how many leads she received, and the facts have been found accordingly.

It is unclear why claimant consistently believed, following her June 2023 transfer, that she was getting far fewer web leads than she actually was, or that the employer was singling her out for mistreatment for unknown reasons by denying her leads. Since at least August 28, 2023, claimant sent a series of increasingly desperate pleas to her then-manager requesting additional leads and seminars, describing her dire financial situation, and requesting explanations for her perceived disparate treatment regarding leads. *See* Exhibit 2 at 1-11. Most of these communications went unanswered, save for the September 8, 2023, reply with her actual lead and sales numbers. Claimant's perceived lack of leads, lack of communication from her manager, financial difficulties, and housing and medical treatment instability, all apparently led to claimant's hospitalization on or around September 21, 2023, for "major anxiety and panic attacks." Exhibit 2 at 11.

Though claimant was released from the hospital later that month and claimant's manager was replaced in early October 2023 with a manager more willing to communicate with her, claimant's beliefs about how many leads she was being given and about the employer's mistreatment of her persisted, as did her mental health symptoms when attempting to discuss her complaints with the new manager. The record suggests that the employer did not have any additional leads to give claimant that they were not already giving her, and therefore suggested that she resign or take a leave of absence, which would presumably have been unpaid. Under these circumstances, a reasonable and prudent person with the characteristics and qualities of an individual with a mental health impairment such as claimants would have quit work if there was no reasonable alternative.

Claimant did not have a reasonable alternative to quitting. The underlying cause of the grave situation claimant faced was the inability to make enough sales and earn enough commission to provide a stable place for her and her family to live and for her to receive needed mental health care. The record shows that claimant made repeated efforts through two managers, over the course of months, to secure more leads and higher sales. More likely than not, the employer had no further leads to give claimant beyond what they were already giving her. Regardless of whether claimant's lack of commission income was attributable to the employer's lack of leads or some other reason, an unpaid leave of absence would only have exacerbated claimant's financial and perhaps mental health difficulties, and these difficulties would likely have continued unabated upon her return to work. Accordingly, claimant had no reasonable alternative but to leave work when she did.

For these reasons, claimant quit working for the employer with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-253056 is set aside, as outlined above.

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

DATE of Service: June 18, 2024

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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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