

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0626

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 24, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective June 23, 2024 (decision # L0005342832).¹ Claimant filed a timely request for hearing. On August 21, 2024, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on August 23, 2024, issued Order No. 24-UI-263611, affirming decision # L0005342832. On August 29, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Grocery Outlet, Inc. employed claimant as a warehouseman from July 1, 2023, through June 22, 2024. Claimant had previously worked for the employer for several years before he was rehired in July 2023.

(2) At all times relevant to this decision, claimant suffered from Graves' disease, an autoimmune disorder, and resultant hyperthyroidism. These conditions caused claimant's legs to swell significantly if

¹ Decision # L0005342832 stated that claimant was denied benefits from June 23, 2024, through June 21, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. *See* ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning June 23, 2024, and until he earned four times his weekly benefit amount in subject employment.

he spent too much time on his feet. Claimant notified the employer of these conditions when he was hired.

(3) Although claimant's role as a warehouseman did not include a supervisory or managerial title, claimant was "basically running the place" in that role. Transcript at 7–8. As such, claimant eventually asked the employer if they would promote him to a title which reflected his responsibilities. The employer declined his request.

(4) During the course of his employment, claimant was late for work once, in or around late May 2024. When the employer discovered this, they looked at claimant's prior timekeeping records, and found that claimant had clocked in late on several other occasions. Claimant was not actually late on these occasions, but had merely forgotten to clock in when he arrived to work on time. Claimant suggested to the employer that they could verify his timely arrivals on those dates by reviewing security camera footage, but the employer declined to do so, and gave claimant a write-up for the matter. Claimant noted at the time that other employees had been late on multiple occasions without being disciplined for it.

(5) On or around June 17, 2024, claimant sent an email regarding expired product in the warehouse to the employer's buyer, who worked at the corporate office. Claimant believed that he was sending the email in response to a request to which he had been expected to respond. However, the management team at claimant's warehouse was unhappy that claimant sent the email.

(6) On June 21, 2024, members of the warehouse's management team called claimant into a meeting. In that meeting, they told claimant that they were dissatisfied with claimant's work performance since they rehired him in 2023, that they felt he had not sufficiently shown gratitude for the rehire, and that he had not yet earned the management team's trust. As a result of this, the management team explained, the employer had decided to demote claimant to the role of a forklift driver in the warehouse. This role required the driver to operate a standing forklift, meaning that the driver would be required to stand for most or all of their shift. The demotion also included the revocation of claimant's credentials for the employer's computer systems.

(7) Claimant was concerned at the prospect of having to stand for most or all of his shift because, as a result of his medical conditions, he would experience significant swelling in his legs. Claimant also felt disrespected by the employer's decision to demote him, believed that the employer was retaliating against him, and was concerned about his potential to move up within the company, which he had previously wished to do.

(8) Other than the Oregon warehouse at which claimant worked, the employer operated only two other warehouses: one in California, and the other in Pennsylvania. Other departments within the Oregon warehouse may have had open positions. However, claimant could not have transferred into those positions because his credentials for the employer's computer systems had been revoked, and he therefore would not have been able to perform work in those positions.

(9) After the meeting with the warehouse management team, claimant considered whether he wished to continue working for the employer. On June 22, 2024, claimant notified the employer that he had decided to quit, effective immediately. Claimant quit because the employer demoted him to the forklift

driver position. Prior to quitting, claimant did not raise with the employer his concern that operating the standing forklift would aggravate his medical conditions.

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 Graves’ disease and hyperthyroidism, 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.

Claimant voluntarily quit work because the employer demoted him to the position of standing forklift driver, apparently in response to various concerns they had with claimant’s work. Claimant felt disrespected by the employer’s decision to demote him, believed that the employer was retaliating against him, and was concerned about his potential to move up within the company, which he had previously wished to do. Claimant did not prove by a preponderance of the evidence that these feelings constituted grave reasons for quitting. Nevertheless, claimant’s circumstances were grave. Because the position into which claimant was to be demoted required him to stand for most, or all, of his shift, he faced the prospect of performing work that could seriously aggravate his chronic medical conditions. No reasonable and prudent person suffering from Graves’ disease and hyperthyroidism, and who could not stand for extended periods of time without significant swelling in their legs, would continue to work for an employer who decided to demote them into a position which would cause these symptoms. Thus, claimant quit for a grave reason.

The order under review concluded that this did not constitute good cause for quitting because claimant did not pursue the reasonable alternatives of either requesting a medical accommodation from the employer or continuing to work for the employer while looking for another job. Order No. 24-UI-263611 at 3. The record does not support the conclusion that either of these were reasonable alternatives to quitting.

As to the suggestion that claimant could have sought a medical accommodation from the employer, the record does not show that the employer would, more likely than not, have been willing to grant such a request. The position into which the employer intended to demote claimant would have required him to stand for most or all of his shift as an essential function of operating the equipment he was assigned to. The record contains no indication that an alternate means of operating the equipment, which would not require claimant to stand for long periods of time, was available in the warehouse. Furthermore, while other positions within the warehouse might have been available, claimant was not eligible to transfer into those positions because of his revoked credentials. For a course of action to be considered a reasonable alternative to quitting, the record must show that such course of action was actually available to the individual. *See Fisher v. Employment Department*, 911 P2d 975, 139 Or App 320 (Or. App.

1996). Because the record does not show by a preponderance of the evidence that the employer would have been willing, or even able, to accommodate claimant's medical concerns by modifying his job duties or moving him into a different position with different physical requirements, any request that claimant made to that effect would have, more likely than not, been futile. Therefore, seeking such accommodations would not have been a reasonable alternative to quitting. Similarly, although it is possible that claimant might have been able to transfer to a different warehouse, those warehouses were located in different states, and it would not have been reasonable for claimant to move hundreds or thousands of miles to transfer to a different warehouse. Doing so, therefore, also would not have been a reasonable alternative to quitting.

As to the suggestion that claimant could have continued to work for the employer until he found a different job, the Court of Appeals has held that such is not a reasonable alternative to quitting. *See Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep't.*, 256 Or App 682, 303 P3d 957 (2013). Therefore, this would not have constituted a reasonable alternative to quitting.

Because claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-263611 is set aside, as outlined above.

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

DATE of Service: September 25, 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

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 الاستئناف 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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