

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0844

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 7, 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 September 29, 2024 (decision # L0006500802).¹ Claimant filed a timely request for hearing. On December 2, 2024, ALJ Chiller conducted a hearing, and on December 11, 2024 issued Order No. 24-UI-276341, modifying decision # L0006500802 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 1, 2024. On December 13, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party 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 her 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) Pacific Gemological Laboratory, Inc. employed claimant as a jewelry appraiser and gemologist from September 25, 2023 through September 3, 2024.

(2) The employer employed several staff members who were responsible for cleaning jewelry items brought in by customers. This process consisted of cleaning the jewelry in an ultrasonic cleaner using a cleaning solution called Magic Green, and then using a steam cleaner to blow off any remaining deposits

¹ Decision # L0006500802 stated that claimant was denied benefits from September 8, 2024 to September 6, 2025. However, the record shows that the date of the work separation was September 3, 2024 and the decision should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 1, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

or cleaning solution after the item was removed from the bath. Although the ultrasonic cleaning units had lids, the cleaning personnel generally used the units without the lids. The employer did not have fume hoods or similar ventilation devices installed in the cleaning area. The employer had been using Magic Green as a jewelry cleaner for many years, and the product was commonly used within the industry.

(3) The employer had carbon monoxide detectors installed throughout the premises which were annually inspected by the fire department. No issues ever arose with the functionality of the carbon monoxide detectors.

(4) Claimant typically was not responsible for jewelry cleaning duties. However, in April or May 2024, claimant temporarily took over some of these duties because of a staffing shortage.

(5) On or around July 4, 2024, claimant began experiencing respiratory issues such as nasal and chest congestion, and a cough. By July 16, 2024, claimant's symptoms had progressed to include a migraine-like headache and confusion. Claimant visited an emergency room to address these symptoms. The emergency room staff were unable to give her a specific diagnosis or determine the cause of her symptoms, although they detected that claimant had carbon monoxide poisoning, which claimant suspected might have been caused by carbon monoxide emissions from jewelry soldering torches used at work. Claimant also suspected that the use of Magic Green might have been the cause of her symptoms. Claimant filed a complaint with Oregon Occupational Safety and Health (OSHA) around that time because of her concerns about Magic Green, but received no response.

(6) On July 17, 2024, claimant began a medical leave of absence from work. Around the same time, claimant also advised the owner of the business that she was concerned that her symptoms might have been caused by mold exposure at work, as claimant had noticed a water stain from a leaking air conditioning unit. The employer subsequently ordered a mold inspection.

(7) On July 18, 2024, claimant returned to the emergency room with the same symptoms she had been experiencing previously. The emergency room staff advised claimant to follow up with primary care, which she did the same day. The primary care provider was unable to give claimant an explanation for her symptoms, but did prescribe her a "migraine cocktail" to help with the symptoms. Transcript at 12.

(8) On July 23, 2024, the employer received a report from the mold inspection, indicating that the employer's premises did not have a mold problem.

(9) On July 24, 2024, claimant returned to primary care because she had begun to experience additional symptoms such as elevated blood pressure and an abnormal gait. Primary care referred claimant back to the emergency room, but the emergency room discharged claimant and referred her back to primary care "because whatever [claimant] was experiencing was not killing [her]." Transcript at 12. Claimant returned to primary care again on July 25, 2024, July 31, 2024, and August 4, 2024 complaining of the same symptoms. Primary care remained unable to determine the cause of claimant's symptoms, however, and could not conclusively state that exposure to any environmental conditions at work were likely to be the cause. Nevertheless, claimant continued to follow up with primary care for some time, as her symptoms persisted.

(10) On September 3, 2024, claimant returned to work from medical leave, although she was still suffering from headaches, as well as “really bad side effects” from the migraine medication. Transcript at 24. At that time, she was able to locate the safety data sheet (SDS) for Magic Green. After reading the SDS, claimant became further convinced that it was likely the cause of her health problems. As such, claimant decided to quit, effective that day, to avoid further exposing herself to the substance. Prior to quitting, claimant did not talk to the owner about her concerns with Magic Green, as she felt that she did not have adequate rapport with the owner, and felt that the owner had previously been “very cold about the situation and... wasn’t really trying to help [claimant].” Transcript at 23.

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). 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.

Claimant voluntarily quit work because she was concerned that exposure to environmental factors at work had caused her to suffer from a number of otherwise-unexplained health problems. The order under review concluded that this did not constitute good cause for quitting because there was “insufficient evidence in the record to support claimant’s contention that environmental factors in the workplace caused her to suffer respiratory or neurological impairments.” Order No. 24-UI-276341 at 4. The order under review erred in basing its determination on claimant’s purported failure to prove a causal relationship between environmental exposure at work and the health problems from which she was suffering. In fact, the record shows that a reasonable and prudent person, when faced with such circumstances, would have concluded that they had no reasonable alternative but to quit.

As a preliminary matter, claimant’s suspicion that the Magic Green cleaning solution was responsible for her symptoms is not implausible. The record suggests that the combination of using the ultrasonic cleaners without their lids, and then blowing off residual cleaner with a steamer, might have aerosolized some of the solution. Additionally, the record shows that the jewelry cleaning area did not have fume hoods or similar ventilation devices installed. Thus, claimant may well have been inhaling cleaning solution vapor for several months, starting when she took over some cleaning duties in April or May 2024.

Regardless of whether the cleaning solution itself was the cause of claimant’s symptoms, however, the record shows by a preponderance of the evidence that claimant was experiencing significant health problems including increased and unexplained respiratory issues, migraine-like headaches, elevated blood pressure, and an abnormal gait. The record does not show that claimant had been suffering from a

pre-existing chronic condition which would have explained these symptoms.² Further, claimant visited both the emergency room and primary care multiple times between July and September 2024, but a cause of her symptoms was never determined. Although the providers were unable to pinpoint the cause, they were not able to rule out environmental exposure. If something other than workplace exposure was the cause, one of claimant's medical providers would more likely than not have told her so. Thus, because claimant was experiencing negative health effects from some environmental condition at work, the prospect of continuing to expose herself to those conditions, especially while she was still experiencing some of the symptoms from her previous exposure, was a grave situation.

The record also shows that claimant had no reasonable alternative but to quit work. Claimant had taken a number of steps over a period of months to try and determine the cause of her health problems, to no avail. Claimant was unable to conclusively determine the cause of her health problems, despite having made significant efforts by visiting the emergency room, following up with medical providers, and contacting OSHA. When claimant had asked the employer about paid medical leave the employer indicated that claimant's health problems were not work related. Transcript at 23. More likely than not, further discussion with the employer would not have been a reasonable alternative because the employer did not believe claimant's symptoms were caused by the work environment. Likewise, without this information, further attempts by claimant to mitigate her exposure to some unknown substance or environmental factor would have likely been unsuccessful, and further exposure would have only served to exacerbate her symptoms. Therefore, these would not have constituted reasonable alternatives to quitting.

Finally, taking additional medical leave would not have been a reasonable alternative to quitting. Claimant had taken close to two months of medical leave by the time she returned to work on September 3, 2024. Despite the time off and following up with medical care numerous times, claimant's symptoms had not resolved and she was experiencing new side effects as a result of the medical treatment she was receiving. Moreover, because, as explained above, the cause of claimant's issues was not determined, it is likely that the problem which led her to take more time off work would have been present whenever she returned from work or, if fully resolved, would have resumed once she returned to the same work environment.

For the above reasons, claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit. Claimant therefore 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-276341 is set aside, as outlined above.

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

DATE of Service: January 13, 2025

² Under OAR 471-030-0038(4), for an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. However, the record does not show that claimant had a long-term physical or mental impairment, but instead suggests that claimant's medical condition had developed recently.

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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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