

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0866

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective September 22, 2024 (decision # L0007112010).¹ Claimant filed a timely request for hearing. On December 16, 2024, ALJ Lucas conducted a hearing, and on December 18, 2024, issued Order No. 24-UI-277163, reversing decision # L0007112010 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On December 23, 2024, the employer filed an application for review of Order No. 24-UI-277163 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's arguments 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 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) North Clackamas School District employed claimant as a special education teacher from August 2023 until September 28, 2024.

(2) During claimant's employment, one of her students was "harming adults and other students every day." Audio Record at 22:18. Claimant had been hit, scratched, kicked, bruised, pinched, caused to

¹ Decision # L0007112010 stated that claimant was denied benefits from August 1, 2023 to September 27, 2024. However, decision # L0007112010 alleged that the work separation occurred on September 28, 2024, and therefore should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 22, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

bleed, and suffered a concussion because of the student's behavior. Audio Record at 22:27. Claimant was afraid to be alone with the student, though claimant felt this behavior and that of other students could be managed with adequate staffing.

(3) In September 2024, the employer provided a "behavior team" of additional staff to assist with claimant's students. Audio Record at 14:10. Claimant felt that staffing was adequate during this time to ensure her safety and the safety of her students. Near the end of that month, the behavior team was removed. Claimant believed that her working conditions returned to being dangerous as a result. Claimant did not expect a behavior team to soon return, given their recent removal.

(4) The employer informed claimant that beginning in the week of September 30, 2024, claimant's work schedule would be changed such that time spent in "case management" would be reduced and time spent "alone with the children with the most difficult behaviors every day" would increase. Audio Record at 20:20. Claimant felt that this change "put [her] in danger and . . . kids were being put in more danger." Audio Record at 20:55.

(5) Claimant suffered from supraventricular tachycardia, a form of irregular heartbeat, which had been diagnosed in approximately December 2023. This condition persisted through the date of the hearing. Claimant felt that the health difficulties she experienced were a result of inadequate staffing that led to "job stress [that] was taking down [her] mental and physical health." Audio Record at 27:35. Claimant's doctor encouraged claimant to "find something different" with respect to work. Audio Record at 30:32. Claimant's symptoms improved following the work separation.

(6) Claimant spoke with her supervisor, the school psychologist, and other administrators frequently throughout her employment about her dissatisfaction with understaffing and the dangers it posed, including on September 27, 2024. The conversations did not change the employer's intention to modify claimant's schedule. Claimant also spoke with others and heard statements from others who held the same position as claimant at other schools in the district and understood the working conditions to be the same in their special education programs.

(7) On September 28, 2024, claimant give the employer written notice of her resignation with immediate effect. Claimant resigned due to the increased danger she anticipated to herself and others from the imminent change to her work schedule and understaffing.

(8) Prior to resigning, claimant considered transferring to the same or a similar position at another school, but believed that the same work conditions existed in special education programs at all other schools in the district. Claimant also considered other teaching positions in areas outside of special education, but found no suitable positions were available. Claimant also considered a leave of absence, which she would likely have been eligible for because of her medical condition, but declined to request one because she would have returned to the same working conditions when the leave expired.

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 supraventricular tachycardia, 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 she believed that understaffing in her department created dangerous working conditions for herself and the students in her care. Claimant had been injured on numerous occasions, mostly by a single student. During the week in which claimant resigned, the employer planned to change her schedule such that claimant would be required to spend additional time alone with the student she considered dangerous, which claimant testified was “the final straw.” Audio Record at 19:50.

Claimant testified that the impacts of these working conditions included that she had been hit, scratched, kicked, bruised, pinched, caused to bleed, and suffered a concussion. Audio Record at 22:16. Additionally, claimant implied that she and her doctor felt that the physical and mental stress posed by the working conditions affected her heart condition. Claimant testified that her doctor “encouraged [her] to find something different” with respect to work. Audio Record at 30:32. No reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would have continued to work for their employer for an additional period of time under these conditions. Therefore, claimant faced a grave situation.

Further, no reasonable alternative to quitting work was available. While a behavior team had been assigned to assist claimant and made the working conditions acceptable while they were there, this assignment ended in late September 2024. That the employer did not have the resources to assign the team there on a permanent basis, or was unwilling to do so for other reasons, suggests that further requests for help from school administrators would not have resulted in a permanent solution. Therefore, more likely than not, it would have been futile for claimant to further pursue changes to the working conditions of her position.

Moreover, a leave of absence, though likely to be granted, would only have temporarily removed claimant from the grave situation she faced. The employer failed to rebut claimant’s assertion that working conditions at other schools within the district were “very similar” to what claimant faced, according to employees there holding the same position as claimant. Audio Record at 31:39. A transfer to the same position at another school would therefore not have been a reasonable alternative to quitting. Claimant additionally testified that she reviewed the employer’s job postings for teaching positions outside of special education, but “didn’t see anything available that would work.” Audio Record at 32:12. The employer failed to rebut this testimony by showing that there was suitable work to which claimant could have immediately transferred. Accordingly, claimant had no reasonable alternative to leaving work when she did, and therefore quit with good cause.

For these reasons, 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-277163 is affirmed.

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

DATE of Service: January 24, 2025

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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