

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1051

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause on June 30, 2018 and was disqualified from benefits beginning June 24, 2018 (decision # 80358). Claimant filed a timely request for hearing. On October 31, 2018, ALJ Scott conducted a hearing at which the employer did not appear and issued Order No. 18-UI-119000, concluding claimant voluntarily left work on July 16, 2018 and was disqualified from benefits beginning July 15, 2018. On November 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) GTO LLC hired claimant to drive a garbage truck on June 13, 2018. Claimant earned \$24.16 per hour working for GTO.

(2) On June 26, 2018, claimant's immediate supervisor told him not to report for work the next day, June 27, 2018, and to come in to meet with the supervisor on the following day, June 28, 2018. When claimant arrived on June 28, the supervisor told him to go to the office to meet with a different supervisor. Claimant did so, and that supervisor told claimant the employer was letting him go. The supervisor would not tell claimant why he was discharged.

(3) After claimant was told he was let go, claimant contacted the recruiter who advised him to call the employer's human resources department if he wanted more information about the reason he was discharged. Claimant did so, and the human resources representative scheduled a conference call among claimant, his immediate supervisor and her. During the call, claimant's immediate supervisor stated that the employer had discharged him because his trainer thought that he left work early on June 26 without permission. Claimant denied that he had done so. Claimant's immediate supervisor told claimant to report for work on Tuesday, July 3, 2018, and he would be put back to work.

(4) From July 3 through July 13, 2018, claimant worked for the employer driving a garbage truck in the SW hills of Portland, Oregon. Claimant thought the routes that he was assigned to drive in the SW hills was too difficult for him as a new driver because they were not mapped and required many "back-

downs.” Audio at ~18:40. Claimant told his trainer that the routes were too difficult, but the employer did not change his route assignments. Claimant did not complain about the routes to his immediate supervisor or human resources. Sometime before July 13, claimant contacted his previous employer, NTR Western, and was told that NTR was willing to re-hire him. Claimant would earn \$17.56 per hour working for NTR. Claimant arranged to start with NTR on Monday, July 23, 2018 because his wife needed a medical procedure during the week of July 15 through 21, 2018 and he wanted to be available to spend time with her.

(5) On July 16, 2018, claimant told the employer he was quitting work effective that day. Claimant did not work for the employer thereafter. Claimant would not have quit work for the employer without having the job offer from NTR. Audio at ~13:53. At the time he quit, claimant was required to take and pass a drug test as a condition of returning to work for NTR. Claimant took and passed the drug test sometime between July 17 and July 20, 2018.

(6) On July 23, 2018, claimant began working for NTR.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). If a claimant leaves work to accept other work good cause exists only if, among other things, the offer of other work is “definite.” OAR 471-030-0038(5)(a). 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 his employer for an additional period of time.

At hearing, claimant’s overriding concern was that his work separation from employment with GTO not be considered disqualifying for the weeks of June 24 through July 7, 2018 because he had claimed benefits for those weeks. Audio at ~ 10:06, ~21:56. Decision # 80358 found that claimant’s work separation from GTO was on June 30, 2018, that it was disqualifying and that the disqualification began on June 24, 2018. However, Hearing Order 18-UI-19000, which is the subject of this review, found that claimant’s work separation from GTO was on July 16, 2018 and claimant’s disqualification began on July 15, 2018. Unless we find on review that a disqualifying work separation from GTO occurred sometime between June 24 and July 7, 2018, which we do not, claimant’s disqualification from benefits from June 24 through July 7 based on his work separation from GTO is not implicated on this review.

Claimant testified that his decision to leave work with GTO on July 16, 2018 was based on the difficulty of the routes that he was assigned as well as that he had arranged to start back with NTR on July 23, 2018. With respect to the nature of the routes that GTO assigned to him, although claimant testified that they were “difficult,” his description was not sufficient to show that driving those routes constituted grave circumstances for him. Claimant did not meet his burden to show that the routes GTO assigned him to drive were good cause for leaving work.

With respect to leaving work with GTO to return to NTR, it appears that as of July 16, the date that claimant left GTO, whether NTR would allow him to start working for it on July 23 was contingent on him passing a drug test that had yet to be conducted when he left work. Audio at ~16:56. According to the Department's Unemployment Insurance Benefits Manual, a job offer is "definite" within the meaning of OAR 471-030-0038(5)(a) only if it is "not contingent on anything" at the time a claimant actually leaves the prior work. Unemployment Insurance Benefits Manual (April 2, 2010) at Ch. 442 §A; *see Appeals Board Decision 2016-EAB-0252* (April 4, 2016) (any contingency to becoming employed in the new work makes the offered work not definite for purposes of OAR 471-030-0038(5)(a)). Because the work offered to claimant by NTR was conditioned on him passing a drug test that had not been administered at the time claimant left work with GTO, the job offer from GTO was not "definite" and could not constitute good cause for him to have left work with NTR when he did. On this record, claimant did not show that he had good cause for leaving work to accept the work offered by NTR.

Claimant did not show good cause for leaving work with GTO on July 16, 2018. Claimant is disqualified from receiving unemployment insurance benefits effective July 15, 2018 until requalified under Employment Department law.

DECISION: Order No. 18-UI-119000 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: December 11, 2018

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 desisyong ito.

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 محكمة 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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