

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1140

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135325). Claimant filed a timely request for hearing. On December 4, 2018, ALJ Janzen conducted a hearing, and on December 6, 2018 issued Order No. 18-UI-120766, affirming the Department's decision. On December 11, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Family Biz employed claimant as a dishwasher from March 13, 2018, the date that its ownership changed, until October 22, 2018. Claimant earned \$12 per hour plus tips working for the employer. For a time under the prior ownership, claimant was employed as a cook.

(2) The Family Biz was a restaurant that catered to university students in Eugene, Oregon. After the employer assumed control of the restaurant, claimant thought the employer did not keep him adequately informed about business operations or scheduling. Claimant was increasingly unhappy working for the employer as a dishwasher and wanted to be line cook. As of approximately fall 2018, claimant's work hours had been reduced somewhat, but the costs that claimant incurred to work did not exceed the remuneration that he received from working.

(3) On Sunday, October 21, 2018, claimant interviewed for a job as a cook with Kunya Fred's Cuisine in Portland, Oregon. The job for Kunya Fred's would pay \$14 per hour. At the end of the interview, claimant understood that he had been offered the job as cook. The person who interviewed claimant told claimant that he would call claimant on Tuesday, October 23, 2018, after he had checked claimant's references, to let claimant know the date he would start work. As of that time, claimant did not know the starting date for the cook job that he thought he had been offered.

(4) On approximately October 22, 2018, claimant notified the employer that he was quitting work. Claimant decided to quit work because he thought he had a new job as a cook with Kunya Fred's.

(5) On approximately October 23, 2018, a representative of Kunya Fred's sent claimant a text message informing claimant that Kunya Fred's would not be hiring him because it wanted a cook who was familiar with Filipino cuisine, which claimant was not.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). If a claimant leaves work to accept an offer of other work, good cause exists only if, among other things, the offer is definite and the work is to begin in the shortest length of time deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a). If a claimant leaves work due to a reduction in hours, the individual has left work without good cause unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

Claimant contended that he left work with the employer for a few reasons, the first of which was that he thought he had a new job as a cook with Kunya Fred's. To the extent the prospect of that job was the reason for claimant's decision to quit, claimant did not show that the offer was "definite" within the meaning of OAR 471-030-0038(5)(a). The Department's UI Benefits Manual states that to satisfy the requirement of definiteness, an offer must generally include an "expected start date" for the new job to ensure that a claimant "must not have left the old job too soon." Unemployment Insurance Benefits Manual (April 1, 2010 rev.), Ch. 400 §442B. Here, claimant did not know when the offered work with Kunya Fred's would start. Accordingly, the offer of new work from Kunya Fred's was not a sufficiently "definite" offer to establish that claimant had good cause to leave work under OAR 471-030-0038(5)(a).

The second reason claimant testified that he left work was due to a reduction in the hours that he was working. However, claimant readily acknowledged that regardless of that reduction, the costs he incurred to work for the employer did not exceed the remuneration that he received from working. Audio at ~23:03. Under OAR 471-030-0038(5)(e), that claimant's hours were reduced was not good cause for him to leave work,

The final reasons that claimant gave for quitting work when he did were that he was unhappy working as a dishwasher, and he thought the employer did not keep him adequately informed about business operations and scheduling. While claimant may have been displeased about his role as a dishwasher, he did not present sufficient evidence to show that working as a dishwasher caused negative consequences that subjected him to objectively grave circumstances. As well, claimant also did not present sufficient evidence to show that the employer's failure to keep him informed about operations and scheduling resulted in harms that gave rise to objectively grave circumstances. That claimant disliked working as dishwasher and may have thought the employer was not keeping him sufficiently well informed was not, on this record, good cause for him to leave work when he did.

Claimant did not meet his burden to show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-120766 is affirmed.

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

DATE of Service: January 7, 2019

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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