

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1178

Affirmed
Disqualification Effective Week 43-18
Eligible Weeks 41-18 and 42-18

PROCEDURAL HISTORY: On October 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within 15 days of a planned voluntary leaving without good cause (decision # 65806). Claimant filed a timely request for hearing. On November 30, 2018, ALJ S. Lee conducted a hearing, and on December 4, 2018, issued Order No. 18-UI-120700, affirming the Department's decision. On December 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bourne Enterprises employed claimant as a machinist from October 12, 2012 to October 8, 2018.

(2) In approximately May of 2018, the employer's owner approached claimant and told him that he wanted claimant to assume more responsibility as a machinist in the lathe area. Claimant responded that he intended to move on from being a machinist at some point in the near future and did not want to assume additional responsibility for the employer. The employer then hired a machinist for the lathe area and moved claimant to the mill area to continue as a machinist but with less responsibility. He also gave claimant a raise in pay.

(3) In early October 2018, claimant planned to move from his residence in Scio to another residence within Scio and decided to combine his planned move with his desire to change careers although he had no other career in mind. He decided he was "done with machining." Audio Record ~ 10:00 to 11:30.

(4) On October 8, 2018, claimant gave the owner notice that he was quitting, effective October 22, 2018. Rather than allow claimant to work out his notice period, the owner terminated his employment that day because he was concerned that claimant discussing his resignation with coworkers during his notice period might negatively affect morale at the employer's shop.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude the employer discharged claimant, not for misconduct, within fifteen days of claimant's planned voluntary leaving without good cause.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (January 11, 2018) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. However, ORS 657.176(8) provides that when an individual has notified an employer that he (or she) will quit work on a specific date, and the employer discharges him, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that he is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned leaving.

In determining whether a voluntary leaving was for good cause, "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). 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 the employer for an additional period of time. In applying OAR 471-030-0038(4), leaving work without good cause includes, but is not limited to, leaving suitable work to seek other work or self-employment. OAR 471-030-0038(5)(b)(A) and (5)(b)(G).

On October 8, 2018, claimant notified the employer that he was quitting work, effective October 22, 2018. However, the employer discharged him on that day, which was less than 15 days prior to his planned quit date. The employer asserted that it discharged him on October 8, rather than allow him to work out his notice period, because he believed that claimant announcing his resignation to others would be bad for morale. Audio Record ~ 20:00 to 24:00. Accordingly, the record does not establish that claimant's discharge was due to any willful or wantonly negligent violation of a reasonable employer expectation. The employer therefore discharged claimant, not for misconduct, on October 8, 2018. The remaining issue to be determined is whether ORS 657.176(8) applies to this case; i.e., whether claimant's planned quit on October 22, 2018 would have been without good cause.

Claimant decided to quit work on October 22, 2018 to facilitate his move from one residence to another within his town of residence and to embark on a career change although he had no specific career in mind. To the extent claimant left work to facilitate his residential move, he left work without good cause. Claimant admitted he could have continued to work at his same job while moving or switched work shifts with the employer, which the employer would have allowed. Audio Record ~ 10:00 to 11:00 and 22:30 to 23:30. Accordingly, claimant failed to show he had no reasonable alternative but to quit work for that reason. To the extent claimant quit work to facilitate a career change, he also left work without good cause. Claimant did not assert or show that his work was unsuitable in any way under ORS

657.190¹, admitted he could have continued working indefinitely and leaving suitable work to seek other work or embark on a self-employment venture he may have been considering also constitutes leaving work without good cause. OAR 471-030-0038(5)(b)(A) and (5)(b)(G).

In sum, claimant notified the employer of his intention to voluntarily quit work, without good cause, but was discharged within fifteen days of his planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits, except that he is eligible for benefits for the weeks including October 7 through October 20, 2018, which are the weeks in which the actual discharge occurred (week 41-18) and the week prior to the week of the planned quit date (week 42-18).

DECISION: Order No. 18-UI-120700 is affirmed.

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

DATE of Service: January 18, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.