

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0068

Affirmed
Late Request for Hearing Allowed
Disqualification

PROCEDURAL HISTORY: On October 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 131344). On November 2, 2018, claimant filed an untimely request for hearing. On November 14, 2018, ALJ Kangas issued Order No. 18-UI-119676 dismissing claimant's request for hearing as untimely subject to reconsideration if claimant completed and filed the appellant questionnaire attached to the order within 14 days of the date the order was mailed. On December 3, 2018, claimant filed the completed appellant questionnaire with the Office of Administrative Hearings (OAH). On December 7, 2018, OAH issued a letter order vacating Order No. 18-UI-119676 and stating that a hearing would be scheduled to consider the timelines of claimant's request for hearing and, if appropriate, the merits of decision # 131344. On January 11, 2019, ALJ Lee conducted a hearing, and on January 16, 2019 issued Order No. 19-UI-122869, allowing claimant's late request for hearing and affirming decision # 131344. On January 24, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: The exhibits that the ALJ admitted into evidence during the hearing were scattered throughout the record, and the ALJ failed to mark Exhibit 5 and did not mark a letter dated November 1, 2018 as a part of Exhibit 6, which she intended to do. Transcript at 24-25. EAB has corrected the ALJ's oversight and as a clerical matter has marked Exhibit 5 and marked the letter as part of Exhibit 6. To clarify the record, the exhibits that were admitted into evidence during the hearing based on the ALJ's pre-hearing descriptions are as follows: Exhibit 1 - administrative decision # 131344; Exhibit 2 - request for hearing; Exhibit 3 - Order No. 18-UI-119676; Exhibit 4 - claimant's completed appellant questionnaire; Exhibit 5 - December 7, 2018 letter order vacating Order No. 18-UI-119676; Exhibit 6 - claimant's completed separation statement and letters of November 1, 2018, November 29, 2018 and January 3, 2019. Audio at ~7:04 *et seq.*; Transcript at 24-25.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant's late request for hearing is allowed are **adopted**.

FINDINGS OF FACT: (1) Best Western Klamath Inn employed claimant as a housekeeper from July 28, 2017 until August 22, 2018.

(2) Claimant was of Native American heritage. Along with her family, claimant customarily attended an annual gathering celebrating Native American culture that was held during a weekend in late August.

(3) Sometime before March 22, 2018, the employer changed payroll companies. On March 22, 2018, the employer paid its employees for all accrued time off as part of the transition to the new payroll company. As result, the paid time off that employees had accrued as of March 22, 2018 was no longer available for them to use.

(4) On July 15, 2018, claimant asked her supervisor if she could have off August 24, 25, and 26, 2018 to attend the annual Native American gathering. Claimant's supervisor told claimant that she needed to request that time off from the general manager and claimant did so. On August 8, 2018, the general manager told claimant that she could not have the requested days off. The general manager denied claimant's request because claimant had only 2.15 hours in paid time off available to her and because summer weekends were the employer's busy time and the employer would be understaffed if it allowed claimant to take a weekend off. Claimant told the general manager she would trade shifts with other employees or would work on her scheduled days off to make up for the time off she wanted to take. The general manager still denied claimant's request for the days off. Claimant did not complain to the human resources department or other management about the denial of her time off request. That day, on August 8, 2018, claimant notified the employer that she was resigning effective August 22, 2018. Claimant decided to quit because the general manager denied her request for time off.

(5) On August 22, 2018, claimant voluntarily left work.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant listed at hearing many complaints that she had against the employer. However, claimant's testimony was clear that she would not have quit but for the employer not allowing her to have August 24, 25, and 26 off from work. Transcript at 42, 49. Because the general manager's denial of that time off was the proximate cause of claimant leaving work, it is the proper focus of the analysis of whether claimant had good cause to leave work.

Claimant's testimony about the importance to her of attending the Native American gathering appeared sincere. However, claimant did not show by a preponderance of the evidence that missing the gathering during only one summer - the summer of 2018 - due to not having enough accrued paid time off available to allow her to attend constituted a grave situation. As well, given the stated cultural importance to claimant in attending the gathering, claimant reasonably should have approached others in authority when the general manager did not permit her to take the time off and tried to have the general manager's decision overruled. Claimant did not contend that she did not know of the existence of the employer's human resources department or was ignorant of its function. Rather, claimant stated she had wanted to call the employer's human resources department about the general manager's denial of her request for time off to attend the gathering, but did not because she did not have its phone number. However, claimant did not challenge the testimony of the employer's witness that contact information for the human resources department was available in many workplace locations, including at the front desk and was posted in the housekeeping break room. Transcript at 39, 55-56. Claimant did not show by a preponderance of the evidence that contacting the human resources department or other management to obtain the requested days off would likely have been futile. A reasonable and prudent person in claimant's circumstances would not have decided to quit work before approaching others in authority, including the human resources department, in an effort to persuade the employer to let her take the time off she needed to attend the Native American cultural gathering. Because claimant did not pursue this reasonable alternative, she also did not show good cause for leaving work when she did.

Claimant did not meet her burden to show good cause for leaving. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-122869 is affirmed.

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

DATE of Service: February 21, 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.



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 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 بمحكمة 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.