

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0072

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111243). Claimant filed a timely request for hearing. On December 28, 2018, ALJ Snyder conducted a hearing, and on January 2, 2019, issued Order No. 19-UI-121981, affirming the Department's decision. On January 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted written argument. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and claimant's argument, to the extent it was based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Pacific Foods of Oregon Inc. employed claimant from September 2016 to October 31, 2018.

(2) In April of 2018, claimant's husband lost his job of nine and one-half years and he began searching for replacement work in Oregon. In October, after six months of searching for local work without success, he received and accepted a contingent job offer from a California manufacturer, where claimant and her husband had family. The job offer claimant's husband received was contingent upon some additional negotiation, a California drug screen, and a background check.

(3) By October of 2018, claimant and her husband could no longer afford their rent or replacement housing and had no family or other resources in Oregon. However, they received an offer from a California relative to live rent free with them near the California manufacturer in question until claimant's husband was back to work with the new employer. Claimant considered staying in Oregon by herself to remain at work with the employer and searched for housing she could afford without success.

To avoid becoming homeless, she decided to accompany her husband to California and live with their relative rent-free.

(4) Claimant and her husband decided to leave for California on November 14, 2018. On October 15, 2018, claimant and her husband gave their landlord 30 days' notice of their intent to leave their housing unit. On October 15, 2018, claimant gave the employer notice of her intent to leave work on October 31, 2018. Claimant and her husband had determined that they needed at least two weeks to prepare for their move and sufficiently clean their housing unit before leaving.

(5) On October 31, 2018, claimant left her job to accompany her husband to California and avoid becoming homeless. On November 14, 2018, claimant and her husband left for California as planned.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time. Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g). OAR 471-030-0038(1)(e) provides, in relevant part, that compelling family reasons "means...the need to accompany the individual's spouse or domestic partner...to a place from which it is impractical for such individual to commute...and due to a change in location of the spouse's or domestic partner's employment."

In Order No. 19-UI-121981, the ALJ found that claimant quit her job on October 31, 2018 and moved with her husband to California where he intended to pursue a contingent job offer. ALJ concluded that claimant voluntarily left work without good cause, reasoning that claimant did not leave work for a "compelling family reason" under OAR 471-030-0038(1)(e) because her husband had not yet been hired and was only pursuing "potential" employment when claimant quit, and that she otherwise could have continued to work for the employer for two additional weeks if she had worked up to her moving date. Order No. 19-UI-121981 at 1-3. While we agree with the ALJ that claimant did not leave work for a "compelling family reason" under OAR 471-030-0038(1)(e) because her husband's accepted job offer remained contingent upon other factors, we disagree that she otherwise left work without good cause.

From claimant's unchallenged description of the nature, severity, and duration of her financial difficulties at the time she left work, it can only be concluded that claimant's situation was grave. Her family's ability to remain in Oregon and afford housing and other life necessities was dependent upon two incomes and they had been required to survive with only one for at least six months. Claimant had considered remaining with the employer and in Oregon alone, but that possibility was dependent upon finding affordable housing for herself, which she was unable to do. The circumstances that caused claimant to quit work were grave.

Claimant did not have reasonable alternatives to quitting when she did. Although she quit her job two weeks prior to moving, viewed objectively, taking two weeks to prepare to move all of her belongings out of state, and also preserve enough time to try to clean her residence enough to recover a security deposit, was not unreasonable under the circumstances.

On this record, claimant demonstrated that no reasonable and prudent person in her circumstances, given her financial situation, inability to find affordable housing for herself, and the offer of free housing out of state that would allow her to keep her family unit together, would have continued to work for the employer for an additional period of time. Accordingly, claimant had good cause for leaving work when she did and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Order No. 19-UI-121981 is set aside, as outlined above.¹

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

DATE of Service: February 15, 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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¹ This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete



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 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.

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