

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0084

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 80602). Claimant filed a timely request for hearing. On January 3, 2019, the Office of Administrative Hearings issued notice of a hearing scheduled for January 17, 2019 at 9:30 a.m. to the parties' addresses of record on file with the Department. On January 17, 2019, ALJ Scott conducted a hearing at which the employer failed to appear, and issued Order No. 19-UI-122989 concluding claimant voluntarily left work with good cause. On January 23, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative asserted, with regard to the employer's failure to appear at hearing, "I was driving at the time. I pulled over to call and had no signal. I got back on road and drove [until] I had [a] signal. By then it was to[o] late." Application for Review at 1. The employer's representative also submitted a written argument that contained information that was not part of the hearing record. The employer's submissions are construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. No other details in support of its explanation regarding why it failed to appear at hearing were provided in its argument and it appears that its absence was caused primarily by a failure to plan to attend the hearing from a location where a land line or adequate cell signal was available. Without any other supporting details, the employer has not shown that its failure to present evidence at the previously scheduled hearing was a circumstance beyond its reasonable control. The employer's request to consider new information under OAR 471-041-0090 is, therefore, denied.

FINDINGS OF FACT: (1) Soft Wind Mobile Home Park/Moon Mtn. employed claimant as a part-time landscaper from May 2017 to October 1, 2018.

(2) Claimant's job duties included spraying weed killing chemicals and pesticides such as Roundup, which claimant learned could cause cancer. Claimant asked the owner several times for a respirator to protect him from the possible health hazards associated with spraying those substances, and was refused.

(3) Claimant also learned that he was legally required to have an applicator's license to apply those substances and could be assessed significant fines if caught applying them without such a license. Claimant asked the owner to arrange for him to obtain an applicator's license, but that request was also refused and he was only told not worry about it because he would not get caught.

(4) On October 1, 2018, claimant quit his job with the employer, in part, for those reasons.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). 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.

Claimant worked for the employer as a part-time landscaper although his usual occupation was that of carpenter. When claimant learned about the risk to his health that spraying weed killing chemicals and pesticides posed, he reasonably asked the owner for personal protective equipment such as a respirator, but his request was repeatedly denied. When he later learned that he was legally required to have an applicator's license to apply those substances, and could be assessed significant fines if caught without one, he asked the owner to arrange for him to obtain such a license, which also was denied. The owner's refusals of claimant's reasonable requests created a grave situation for claimant and left him with no higher source at the employer to appeal to. Viewed objectively, claimant's working conditions constituted a circumstance of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that he had no reasonable alternative but to leave work when he did.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation from the employer.

DECISION: Order No. 19-UI-122989 is affirmed.

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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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 الإستئناف 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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