

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0237

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 133210). Claimant filed a timely request for hearing. On February 15, 2019, ALJ Wyatt conducted a hearing, and on February 22, 2019 issued Order No. 19-UI-125148, affirming the Department's decision. On March 6, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant and the employer submitted written arguments to EAB. Both arguments contained information not admitted into evidence at the hearing and neither party showed, as required by OAR 471-041-090(2) (October 29, 2006), that factors or circumstances beyond the party's reasonable control prevented it from doing so. For this reason, neither argument was considered when reaching this decision.

FINDINGS OF FACT: (1) Sherm's Thunderbird Market, Inc. employed claimant from March 19, 1990 until January 3, 2019 as a clerk whose duties included ordering and stocking cheese in the dairy section and, as needed, acting as a checker.

(2) As of the 2018 Christmas holiday, claimant was a union journeyman and earned \$16.16 per hour. Claimant received premium pay for some of the hours he worked. Claimant typically worked forty hours per week, Monday through Fridays.

(3) During the Christmas 2018 holiday, claimant did not order enough cheese to meet customer demand. The employer thought that the shortage was due to claimant's inadequate work performance. Claimant thought that factors beyond his control had interfered with his ability to order enough cheese.

(4) As of January 3, 2019, claimant's manager decided to eliminate ordering and stocking of cheese and other dairy products from claimant's job duties, and assign claimant to working full time as a checker. The change in claimant's duties was not a demotion or a reduction in claimant's rank since a job as checker remained in the clerk classification, he would continue to earn \$16.16 per hour, and would

continue to work forty hours per week. However, claimant would not receive premium pay for hours he worked as a checker.

(5) On January 3, 2019, the manager spoke to claimant about the changes that would be made in his job duties. The manager informed claimant that the change was due to the cheese shortage that had occurred during the holidays. The manager told claimant that, as a checker, he would earn the same pay per hour that he was already earning, and that he would work forty hours per as he currently was on Mondays through Fridays. Claimant replied that he was quitting work on-the-spot because his duties with respect to stocking and ordering cheese were being eliminated. Claimant then left the workplace and did not return.

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). If a claimant leaves work due to a reduction in the rate of pay, claimant has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in claimant's labor market, except the reduction in pay must be for the position that claimant holds and not the result of a transfer or reassignment. OAR 471-030-0038(5)(d)(A) (January 11, 2018). Otherwise, "good cause" is defined, generally, 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 his employer for an additional period of time.

Claimant testified that he left work upon learning that his job would change because he liked working in the dairy section and he considered the change to be an unfair demotion and an attempt to push him out. Audio at ~10:40, ~12:25. When discussing why he quit, claimant also referred to the fact that, after the change to his duties, he would no longer receive premium pay for some of the hours he worked. Audio at ~9:50. Each of these reasons for leaving work is considered in turn to evaluate whether claimant had good cause to leave work.

Claimant did not identify any cognizable or concrete harms that would befall him from the employer's reassignment of him to a full-time checker position. Aside from asserting that he was unfairly demoted, claimant did not show that the reassignment was correctly viewed as a demotion since he remained in exactly the same job classification as before and his pay per hour, the days that he worked, and the total number of hours he worked were the same as before. However, even assuming that he was demoted, claimant did not show how a demotion was harmful to him. Claimant also did not show that any unfairness that resulted from the alleged demotion was so disproportionate that a reasonable and prudent person would have left work rather than agreeing to work as a full-time checker. As well, claimant's inference that the employer was trying to push him out by the reassignment does not appear well-founded since it is not likely that reasonable employer would continue paying equivalent wages and benefits to someone it wanted to force into quitting.

Finally, with respect to the premium pay that claimant would allegedly lose when his position was changed to full-time checker, it resulted from a reassignment in duties. A reduction in pay that is due to a job reassignment does not, without more, establish good cause for quitting under OAR 471-030-0038(5)(D)(a). Under the circumstances, the elimination of premium pay to claimant was not good cause for leaving work.

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

DECISION: Order No. 19-UI-125148 is affirmed.

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

DATE of Service: April 11, 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

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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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