

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0258

Affirmed
Disqualification
(Descalificación)

PROCEDURAL HISTORY: On January 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 163424). Claimant filed a timely request for hearing. On February 25, 2019, ALJ S. Lee conducted a hearing, and on February 27, 2019 issued Order No. 19-UI-125433 affirming the Department's decision. On March 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pambiche LLC employed claimant from June 2016 until December 20, 2018, last as a food preparation worker.

(2) In 2017, claimant obtained a second job working full time at a landscaping business. Around that time, claimant began working for the employer only on weekends, Saturdays and Sundays. Claimant usually worked eight hours per weekend day. In August 2018, claimant took time off from work to visit Cuba. The employer authorized a leave for claimant and agreed to hold claimant's position for him until Saturday, September 8, 2018. The employer scheduled claimant to work on Saturday and Sunday, September 8 and 9, 2018

(3) On September 8, 2018, claimant reported for work, but injured himself when he spilled boiling water on his foot. Claimant was off from work with the employer and the landscaping business for approximately a month due to the injury. On October 6, 2018, claimant returned to work for the employer. After his return, claimant resumed working eight-hour shifts on both Saturdays and Sundays for the employer.

(4) Sometime in November, the employer began assigning fewer tasks to claimant to perform on his shifts and the hours he worked on Saturdays and Sundays decreased from eight to three and a half or four. Claimant was displeased that his earnings were reduced from working fewer hours. Claimant also learned that the employer's insurance company would pay him for the part-time work he missed with the employer due to his foot injury, but not for the full time work he missed with the landscaping company.

Claimant thought it was unfair that the employer's insurance company did not provide coverage for all the income he lost. Claimant contacted the owner and told her that he was unable to live on the \$500 per month in income he was receiving from the employer. However, claimant's work hours did not increase.

(5) The employer customarily closed for a couple of weeks in November to perform maintenance and reopened after Thanksgiving. On November 12, 2018, the employer's restaurant closed. It reopened on November 22, 2018, the day after Thanksgiving. Claimant remained working after the restaurant reopened and continue to get approximately four hours each Saturday and Sunday. Claimant continued to work in the hope that his hours and the resulting pay would increase.

(6) On December 20, 2018, claimant notified the employer that he was leaving work. Claimant left work for the stated reason that the employer reduced his work hours, which decreased his income.

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). "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) (December 23, 2018). If a claimant leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with the return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). 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.

If claimant left work solely because his hours were reduced, he must satisfy the requirements of OAR 471-030-0038(5)(e) to avoid being disqualified from benefits. Claimant did not suggest or show that continuing to work for the employer interfered with his return to full time work, nor is it likely that it would since claimant's work for the employer was limited to weekends. Although claimant referred in general terms to not being "able to live on" the \$500 per month he received from the employer, he did not suggest or show that the cost of working for the employer exceeded the amount of remuneration he received from the employer. Transcript at 11. As a matter of common sense, absent claimant making a showing that it was, it is unlikely that the approximately \$100 per week in pay that he received from the employer would not cover the costs of working. The record does not show more likely than not that claimant met the standard for establishing good cause under OAR 471-030-0038(5)(e).

To any extent claimant might also have left work because he thought the employer had reduced his hours in retaliation for the workplace injury he sustained or because the employer's insurance company did not compensate him for his loss of earnings from the landscaping business due to that injury, he did not show good cause for leaving. Transcript at 7, 10, 12. Claimant did not show that his hours were reduced for any reason other than because the employer's business slowed in late fall or winter, as the employer's witness contended, nor did he show the employer reduced his hours in particular or acted with a bad intention. Transcript at 18. With respect to the alleged decision of the insurance company not to reimburse claimant for his lost wages from the landscaping company, there was no indication in the

record either that the employer influenced that decision in any way or that the decision was made for other than neutral, non-retaliatory business reasons. On this record, claimant did not meet his burden to show that the employer or the insurance company reduced his hours or denied him benefits for improper reasons.

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

DECISION: Order No. 19-UI-125433 is affirmed. *La Orden de la Audiencia 19-UI-125433 queda confirmada.*

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

DATE of Service: April 16, 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.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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