

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0269

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 150326). Claimant filed a timely request for hearing. On February 21, 2019, ALJ Scott conducted a hearing, and on February 25, 2019 issued Order No. 19-UI-125254, affirming the Department's decision. On March 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Salem Golf Club Inc. employed claimant as a golf course maintenance worker from July 1, 2013 until April 24, 2019. The employer was family owned and operated, and had a small staff.

(2) For the calendar years 2013, 2014, 2015, and 2016, the employer timely issued W-2 tax forms to claimant that claimant used to prepare his federal and state income tax returns. In 2018, Claimant did not receive a W-2 for calendar year 2017.

(3) Sometime before April 17, 2018,¹ the deadline for submitting federal and state income tax returns for calendar year 2017, claimant phoned the Internal Revenue Service (IRS) for advice on how to prepare his tax return in the absence of a W-2 tax form from the employer. To ascertain his 2017 income, an IRS representative told claimant to use a reliable record of his own choosing in place of the missing W-2. To determine his 2017 income from the employer, claimant used the year-to-date income of \$13,681.59 shown on the pay stub he received for the last work he performed in 2017. Exhibit 2 at 10. Claimant filed his 2017 tax returns on time and stated that his income from the employer was \$13,681.59.

¹ <https://www.irs.gov/newsroom/2018/tax-filing-season-begins-jan-29-tax-returns-due-april-17-help-available-for-taxpayers>. The filing deadline for calendar year 2017 tax returns is a generally cognizable fact of which EAB takes notice. Any party who objects to EAB doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. Unless such objection is received and sustained, the noticed fact will remain in the record at EAB.

(4) On April 24, 2018, claimant voluntarily left work because he did not receive a W-2 from the employer stating his 2017 income in a timely fashion and he had lost confidence in the employer.

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) (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.

Assuming that claimant notified the employer’s office staff, owner, and maintenance superintendent that he had not timely received his 2017 W-2 form, as he testified he did, and one still was not supplied to him, he did not show that his circumstances were grave. From claimant’s testimony, it appears that the IRS was readily able to inform him how to get reliable income information in place of that which would have been on a W-2 form for purposes of preparing a tax return. Claimant did not contend that he was subjected to an onerous burden in locating the pay stub he used to determine his 2017 income or in calculating his income from it. Claimant did not contend that his income tax returns for tax year 2017 were filed late or incorrectly as a result of not receiving a W-2 form from the employer, or that he was assessed financial penalties or incurred any costs directly or indirectly attributable to not having received a W-2 form. Since claimant had timely received W-2s for all tax years prior to 2017, it appears at worst that the missing W-2 at issue was likely attributable to a one-time aberrational circumstance that was not likely recur.

Claimant stated he left work because he had lost confidence in the employer as a result failing to receive a W-2 for tax year 2017. Losing confidence is not the sort of situation that, more likely than not, would cause a reasonable and prudent person of normal sensitivities to conclude that the situation was so grave that he had no alternative other than to leave work. On this record, claimant did not meet his burden to show that grave reasons caused him to leave work when he did.

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

DECISION: Order No. 19-UI-125254 is affirmed.

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

DATE of Service: April 12, 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 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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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