

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0489

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 2, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 83647). Claimant filed a timely request for hearing. On May 13, 2019, ALJ Snyder conducted a hearing, at which the employer did not appear, and issued Order No. 19-UI-129802, affirming the Department's decision. On May 29, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Lam Research Corporation employed claimant as a warehouse materials handler from September 2012 until February 7, 2019.

(2) Claimant worked 12-hour shifts, three or four days each week and regularly received overtime. Claimant had a lengthy commute to work. Because of traffic conditions at the times of day she commuted when working 12-hour shifts, claimant's commute took one and one-half hours each way.

(3) At times during claimant's employment, the employer asked her whether she was willing to work eight-hour shifts, five days per week. Claimant declined because she liked working 12-hour shifts, and the extra one or two days per week she would need to drive to work would cause her to incur additional costs in commuting, additional driving time, and she would not receive the overtime pay to which she was accustomed. Working eight-hour shifts would require claimant to start work later in the mornings and end work later in the afternoons. She anticipated that traffic conditions at those times of day would extend her commute to approximately two hours each way in heavier traffic.

(4) Sometime around early February 2019, the employer had been laying off employees. On February 7, 2019, an employer representative met with claimant, in part about an allegation that claimant had made a mistake measuring a crate. Claimant was not responsible for the mistake.

(5) At the February 7 meeting, the representative offered claimant continuing employment if she was willing to work eight-hour shifts. The representative also told claimant that if she left work that day she could receive approximately \$2,000 severance pay, and if she did not leave work she could be laid off work within two weeks without a severance package. *See* Audio recording ~ 15:10-15:20; 17:20-17:35; *see also* request for hearing.

(6) Claimant did not want to work eight-hour shifts five days per week, and did not want to be laid off work without a severance package. Claimant declined to change her shift and continue working, and chose instead to resign effective February 7 and receive the severance package.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

At hearing, claimant disputed that she quit work despite having agreed to leave work in order to receive a severance package. Accordingly, the first issue this case presents is the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant's testimony about the circumstances surrounding her work separation was inconsistent. She first testified that the employer "called me into the office and told me that this was going to be my last day." Audio recording at ~ 8:05-8:15. However, she later testified that the employer told her at that meeting that "if I was to continue" working the employer would alter her schedule from three or four 12-hour shifts per week to five 8-hour shifts. Audio recording at ~ 10:30-11:05. Claimant then testified, in contradiction to her earlier testimony, that she was not given an option to continue her employment. Audio recording at ~ 11:15-11:25. When asked to reconcile that claim with the statement she made on her request for hearing, in which claimant wrote, "They said if I continued to work I may be laid off without the severance pay in a couple of weeks," claimant then testified that the employer *had* offered her continuing work, five days per week, with the possibility that she would be laid off within two weeks. *Compare* request for hearing; Audio recording at ~15:10-17:35.

Considering claimant's testimony as a whole, her testimony that the employer told claimant she was going to be discharged on February 7th is not credible, nor is it credible that the employer did not give her the option to continue her employment. Nor is it logical that the employer would both tell claimant she was being discharged and offer her continuing work in the same conversation. It is more likely than not that the employer offered claimant the option to continue working on a five days per week, 8-hour shift schedule, for approximately two weeks and possibly longer, or to leave work immediately and receive a \$2,000 severance. Because continuing work was available to claimant, and claimant chose not to continue working, the work separation was a voluntary leaving for purposes of unemployment insurance law.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS

657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would 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 their employer for an additional period of time.

Claimant quit work, in part, because the employer was offering her continuing work with a disadvantageous work schedule. Claimant was concerned about the reduction in hours and reduction in pay.

An individual who leaves work due to a reduction in hours 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). Claimant did not assert or establish by a preponderance of the evidence that working for the employer would interfere with her return to full time work, particularly since she would in fact be working full time for the employer even after her hours were reduced. Although claimant established that the cost of working would increase because she had to commute an extra hour per day and add one or two additional commutes to her weekly schedule, she did not establish that the cost of the commute would exceed her remuneration from working full time for the employer. She therefore did not establish good cause to quit work due to the reduction in hours.

An individual who leaves work due to a reduction in pay 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 the individual’s labor market. OAR 471-030-0038(5)(d). There is nothing in the record suggesting that the rate the employer would pay claimant for an 8-hour day, five day per weeks schedule was below the median rate of pay for similar work in claimant’s labor market. Nor is there evidence that the employer actually reduced claimant’s rate of pay, rather than changed her schedule in a way that had the effect of removing her eligibility for the guaranteed overtime that claimant had earned since approximately 2012. Claimant did not establish that she had good cause to quit work because of a reduction in her rate of pay.

Claimant also quit work, in part, to accept a severance package of \$2,000. The alternative to quitting work to accept the severance package would have been accepting a new work schedule, which was an objectively reasonable alternative to quitting work over the schedule. Although the employer notified claimant that if she did not accept the severance package her employment could or may end within two weeks, claimant did not assert or establish that the employer had plans to end her employment within that period of time. Therefore, although claimant’s continued employment might have been limited to two weeks, it also might have continued indefinitely. Although continuing to work would have meant accepting a disadvantageous schedule that made her life harder, working a 5-day a week schedule is a working condition many full-time employees must accept, and, objectively considered, is not grave.

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

DECISION: Order No. 19-UI-129802 is affirmed.

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

DATE of Service: July 2, 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 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 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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