

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0512

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 164702). Claimant filed a timely request for hearing. On May 23, 2019, ALJ Meerdink conducted a hearing, and on May 24, 2019 issued Order No. 19-UI-130501, affirming the Department's decision. On June 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Both claimant and the employer submitted written arguments. Both arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the party'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) G B Construction Co. employed claimant as a construction laborer from April 23, 2013 until January 2, 2019.

(2) On two or three occasions in 2018, claimant commuted to a job site in an employer vehicle driven by an employee claimant believed was high or impaired. In December 2018, claimant thought that some employees had smoked marijuana while working at a job site. Around this time, claimant spoke to the employer's owner about employee drug use. However, the owner had never observed an employee working under circumstances in which he thought the employee was high or impaired and did not take action on claimant's report.

(3) On January 2, 2019, claimant reported for work and gathered with some employees in the owner's office. After the employees left the office, claimant stayed behind and told the owner that he wanted a raise. At that time, claimant was earning \$20 per hour. The owner told claimant that he was not going to give him a raise. Claimant responded that he had told himself that he would quit if the employer did not agree to give him a raise after the New Year. Claimant quit work that day.

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

The employer contended that claimant quit work because the owner refused to give him a raise, while claimant contended that the employer discharged him after he complained about drug use in the workplace. 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 account of the work separation first failed to mention that he requested a raise immediately before the separation. When directly questioned about whether he had asked for a raise, claimant modified his account to state that after noticing that the employee who was going to drive him to the work site that morning was impaired, he told the owner that he wanted a raise "to open up his eyes" to drug use in the workplace. Audio at ~9:17; *see also* ~10:16, ~12:38. According to claimant, the owner became angry at the mention of drugs and stated to him, "I don't need you. I don't have anything for you," which claimant construed as a discharge. Audio at ~5:40. Claimant's account does not appear plausible. It is illogical that claimant reasonably would think that his reference to a raise that he wanted would alert the owner to ongoing drug use in the workplace. It also is not clear why the owner would summarily discharge claimant for alluding to workplace drug use, when the owner logically should have been concerned about the employer's possible liability if its employees were working while impaired.

The employer's account of the work separation, that claimant did not allude to employee drug use that morning, but quit after being told he was not getting a raise, made more logical sense than claimant's account. Because it is the more plausible and reliable, the employer's account of the work separation is accepted. Claimant's work separation was a voluntary leaving on January 2, 2019 due to the employer's refusal to give him a raise.

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) (December 23, 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 their employer for an additional period of time.

As discussed above, the preponderance of the reliable evidence in the record supports that claimant left work because the employer refused to give him a raise. However, claimant did not identify the harms he sustained from not receiving a raise. Claimant did not show that not receiving a raise was an objectively grave circumstance from which he had no alternative other than to leave work. Absent a showing of gravity, claimant did not have good cause to leave work when he did. Claimant is therefore disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-130501 is affirmed.

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

DATE of Service: July 5, 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 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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