

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0583

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 24, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 100719). Claimant filed a timely request for hearing. On June 20, 2019, ALJ M. Davis conducted a hearing, and on June 21, 2019, issued Order No. 19-UI-132063, affirming the Department's decision. On June 25, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Southern Oregon Tire and 4X4 LLC employed claimant as a full-time mechanic and technician from March 23, 2019 to April 30, 2019.

(2) Shortly after claimant's employment started on March 23, 2019, claimant began to experience breathing difficulties, short-term memory loss and body aches which he attributed to his work environment. The employer's workspace often was poorly ventilated with running vehicles creating carbon monoxide gas and brake cleaning applications producing toxic fumes. Claimant believed that because he was older, he could not tolerate the carbon monoxide and toxic fumes as well as his younger coworkers. He asked the employer's owner for a reduced weekly schedule to both limit his toxic exposure and allow his body to recover from its effects, which request the owner declined.

(3) On April 26, 2019, claimant met with the owner for lunch. He told the owner that he had a job interview on April 29, 2019. When the owner asked claimant if he was quitting, claimant said he was not at that time but was looking for other work because he believed the work environment was causing

him health problems. Claimant believed that the owner had indicated that if he attended the interview, he would be discharged because the owner did not want to train a temporary employee.

(4) On April 29, 2019, claimant attended the job interview and received and accepted an offer of work contingent on passing a physical and a drug test over the next few weeks. Claimant was not given a start date because the offer was contingent. Claimant did not attend work that day.

(5) On April 30, 2019, claimant notified the owner that he had been offered a job at the interview the previous day. The owner asked claimant if he would give him two weeks' notice. When claimant responded that he thought that he had been discharged for attending the job interview, the owner responded that he had not been discharged and wanted him to work at least another two weeks. Claimant responded that he could not continue working because he was concerned about the work's effect on his health and might cause him to fail his upcoming physical exam.

(6) On April 30, 2019, claimant quit work to protect his health.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

Work Separation. The parties disagreed on the nature of the work separation with claimant asserting he was discharged on April 26, 2019 when the employer told him that if he attended the April 29th job interview his employment would be over and the employer asserting that claimant quit on April 30, 2019 when claimant told him he had tentatively accepted the new job after the interview. Audio Record ~ 9:15 to 9:30; 20:00 to 22:30. 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). Although claimant initially asserted that he was discharged, he later admitted that on April 30, 2019, he declined the employer's request that he work an additional two weeks before beginning his new job. Because claimant could have continued to work for the employer for an additional period of time after April 30, 2019, the work separation was a voluntary leaving on that date.

Voluntary Leaving. 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.

Order No. 19-UI-132063 concluded that claimant quit work because he received an offer of other work on April 29, 2019, based upon the following reasoning,

While claimant testified that he had concerns about his health, he also testified that he would have continued working for the employer had he not received the offer of [other] work... Thus the evidence is persuasive that claimant left work with the employer to accept new work.

Order No. 19-UI-132063 at 2. However, although claimant explained that he would have reported for work on April 30th if he had not received an offer of work on April 29th, there was no dispute that the reason he gave for quitting work *when he did* was because of the effect the work environment was having on his health.

The owner admitted that previously, when he questioned claimant about “forgetting things” and the slow pace of his work, claimant told him that he attributed those things to the toxic fumes he was breathing in the work place and requested a reduced schedule because of it, which the owner declined. Audio Record ~ 22:40 to 23:30. He also testified that claimant told him that he could not give him two additional weeks of work on and after April 30, 2019 for the same reason, because of the effect the toxic fumes was having on his health. Audio Record ~ 20:00 to 21:15.

The owner did not dispute that toxic fumes were present in the workplace and claimant was in the best position to know his symptoms and their probable cause giving the timing at which they appeared. Experiencing memory loss, body aches and difficulty breathing while in the workplace created a grave situation for claimant and his reasonable requests for accommodation had been declined. Viewed objectively, claimant established that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 19-UI-132063 is set aside, as outlined above.¹

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

DATE of Service: July 30, 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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¹ This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.



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

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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