

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0603

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81931). Claimant filed a timely request for hearing. On June 6, 2019, ALJ Frank conducted a hearing, and on June 14, 2019 issued Order No. 19-UI-131728, affirming the Department's decision. On June 27, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Asante employed claimant as a patient services representative from January 30, 2017 to March 15, 2019.

(2) Claimant had concerns about aspects of her working conditions with the employer, and her hours. Because of those concerns, she began looking for other work in Oregon and Nevada but was not successful. She spoke with the employer about her desire to relocate from Oregon to Nevada.

(3) In late 2018, the employer temporarily assigned claimant full time work. The employer intended to return claimant to part time work after November 30, 2018. Claimant thought the full time employment would persist and had a second job, and did not pursue other full time work opportunities with the employer that were available at that time. After returning to part time work, claimant periodically requested additional hours from the employer, but the employer did not have additional regular hours to assign to her.

(4) On November 20, 2018, claimant told the employer she planned to quit her job and move to Nevada in approximately mid- to late-February 2019. On November 27, 2018, claimant notified her supervisor that she would quit on March 1, 2019. On January 24, 2019, claimant notified her supervisor that she was trying to lock down the date upon which she would quit. On January 29, 2019, claimant notified her supervisor that she was planning to quit effective March 15, 2019.

(5) Claimant worked for a Massage Envy in addition to her part time work for the employer. She typically worked 20-25 hours per week for the employer, at a rate of \$14.90 per hour. She required the additional income from Massage Envy to meet her monthly expenses. At the beginning of March 2019, claimant unexpectedly lost her job when Massage Envy closed the location at which she worked.

(6) Claimant then had to support herself solely on her earnings from the employer, but could not do so. Her gross monthly income was approximately \$1,291.33-\$1,614.16. Claimant's monthly expenses equaled or exceeded her gross monthly income, including: \$795 rent; \$116 cable, phone, and internet; \$315 car payment; \$100 medical expenses; plus additional costs for utilities, groceries, and toiletries.¹

(7) Claimant could not afford to meet her basic monthly expenses after losing the Massage Envy job. Claimant gave notice at her apartment that she was moving out to avoid being evicted when she could not pay her rent in April. Claimant sought more hours with the employer but extra hours were only available when other employees needed coverage. The employer could not reliably give claimant more hours or move her to a full time position. Claimant ultimately decided to quit when she did primarily because she could not afford to support herself, and needed to move to Nevada to live with family that could assist her financially.

(8) On March 5, 2019, claimant notified the employer that she had lost her second job and was available for all available hours. On March 8, 2019, claimant confirmed that she would quit her job effective March 15, 2019. Effective March 15, 2019, claimant quit her job with the employer and within a few days moved to Nevada.

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

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).² 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.

The order under review concluded that claimant left work without good cause because, even if her financial situation in March 2019 was grave and necessitated moving, "she had the reasonable alternative of simply continuing to work until the end of that month for which her rent was paid. Had she done so, she would have earned most of the following month's rent." Order No. 19-UI-131728 at 5. The record shows that claimant was facing a grave situation because of her inability to support herself, but does not support the conclusion that she had a reasonable alternative to quitting work when she did.

Had claimant continued to work for the rest of March, instead of quitting when she did on March 15th, claimant would have earned approximately \$645.66-\$807.08 in gross wages, which is significantly less

¹ See Claimant's request for hearing.

² Claimant had an impairment that resulted in migraine headaches, but her testimony suggested that the impairment did not affect her decision to leave work when she did.

after standard deductions. Although claimant's earnings might have totaled a significant portion of the money she needed to pay her April rent, she would not have earned enough to pay the full amount. Nor would claimant's net earnings from work between March 15th and March 31st have covered claimant's other expenses, such as her car payment, groceries, or medical expenses. Nor would such earnings have stretched to cover the amount claimant would have needed to relocate her residence to Nevada, where she could live with family who could help support her. The record fails to show that "simply continuing to work" was a reasonable alternative to quitting work.

Nor was continuing to work until claimant found another job, or an additional job, a reasonable alternative to quitting work when she did. The Oregon Court of Appeals has repeatedly held that continuing to work while seeking other work is not a reasonable alternative to quitting work; indeed, it is not even an alternative to quitting. *See Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep't.*, 256 Or App 682, 303 P3d 957 (2013).

Claimant clearly had the intent to quit work, and potentially to move to Nevada, since November 2018 or earlier, which makes her claim that she ultimately quit work on March 15th because of a grave situation suspect. However, prior to March 8th claimant's plans to quit were somewhat ambiguous, as shown by the number of times she notified the employer of her intent to quit work and then changed her planned leaving date, all while maintaining her employment. Ultimately, whatever claimant's previous reasons were for planning or intending to quit her job, whether on March 15th or an earlier or later date, the evidence is unrefuted that at the point in time that she quit she was facing a grave situation because she was unable to pay her rent or otherwise support herself. No reasonable and prudent person would have continued working under those circumstances.

Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits based upon her work separation.

DECISION: Order No. 19-UI-131728 is set aside, as outlined above.³

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

DATE of Service: August 1, 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.

³ 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.

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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

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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