

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0694

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from benefits effective April 7, 2019 (decision # 73235). Claimant filed a timely request for hearing. On July 2, 2019, ALJ Snyder conducted a hearing, at which the employer failed to appear, and on July 10, 2019, issued Order No. 19-UI-133067, modifying the Department's decision by changing the date of disqualification from April 7, 2019 to April 21, 2019. On July 22, 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). Had we considered claimant's argument, the outcome of this decision would have remained the same for the reasons explained in the Conclusions and Reasons section of this decision.

FINDINGS OF FACT: (1) Starplex Corp. employed claimant as a part-time employee providing crowd control services from October 19, 2015 to April 22, 2019.¹

(2) In approximately July 2017, claimant's fiancé left Oregon and began residing in New Jersey, where she established and began operating a business. Claimant remained in Oregon and continued to work for the employer. In July 2017, claimant and his fiancé made a plan that claimant eventually would move to

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed facts will remain in the record.

New Jersey, where they would be married. In April 2019, claimant decided to move to New Jersey for that reason.

(3) On April 22, 2019, claimant notified the employer that he was leaving work to relocate to New Jersey, and quit that day. Claimant quit work to move to New Jersey and marry his fiancé. The employer did not have any business locations in New Jersey to which claimant could transfer.

(4) On May 13, 2019, claimant moved to New Jersey.

(5) As of July 2, 2019, claimant and his fiancé had not yet married.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). 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. In a quit case, claimant has the burden of proving good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Quitting work with good cause includes quitting due to “compelling family reasons.” OAR 471-030-0038(1)(g). OAR 471-030-0038(1)(e) provides, in relevant part, that “compelling family reasons” include “[t]he need to accompany the individual’s spouse or domestic partner to a place from which it is impractical for such individual to commute and due to a change in location of the spouse’s or domestic partner’s employment.” OAR 471-030-0038(1)(e)(C).

Claimant quit work to move to New Jersey to marry his fiancé. Claimant did not establish that by quitting work for that reason, he quit for a “compelling family reason” under OAR 471-030-0038(1)(g), because he did not quit work to accompany a “spouse or domestic partner to a place from which it is impractical for such individual to commute and due to a change in location of the spouse’s or domestic partner’s employment.” At the time claimant quit, claimant’s fiancé was not yet his spouse and the record does not show that the fiancé was his “domestic partner” within the ordinary meaning of that term. The *Merriam-Webster.com Dictionary* defines a “domestic partner” as “either one of an unmarried heterosexual or homosexual cohabiting couple.”² Claimant had not lived together with his fiancé for at least two years and did not leave work to accompany her due to a change in location of her employment occurring in proximity to the time he quit. On this record, claimant’s fiancé had left Oregon approximately two years earlier to establish and operate her own business as an entrepreneur.

Nor did claimant establish that he quit work for good cause under OAR 471-030-0038(4). Under that standard, a claimant must show that his reason for quitting was of such gravity that “no reasonable and prudent person [in claimant’s circumstances] would have continued to work for the employer for an

² <https://www.merriam-webster.com/dictionary/domestic%20partner>.

additional period of time.” OAR 471-030-0038(4). Claimant quit work on April 22, 2019, three weeks before he left for New Jersey to marry his fiancé. However, the record does not show that no reasonable and prudent person in his circumstances would have continued to work until closer to the date he left for New Jersey. Moreover, as of July 2, 2019, the date of the hearing, claimant had still not married his fiancé, and presumably could have continued to work for the employer until closer to the date of his marriage. Nor does this record show that grave circumstances connected to his relationship with his fiancé necessitated he quit work three weeks prior to moving, or move to New Jersey when he did. On the facts set forth in this hearing record, claimant failed to show that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time after April 22, 2019.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 19-UI-133067 is affirmed.

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

DATE of Service: August 23, 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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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