

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0972

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 13, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120940). Claimant filed a timely request for hearing. On September 24, 2019, ALJ Murray-Roberts conducted a hearing, and on September 25, 2019 issued Order No. 19-UI-137069, affirming the Department's decision. On October 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Employers Overload employed claimant until May 24, 2019 as a recreational vehicle (RV) washer and cleaner. Employers Overload is a temporary staffing agency.

(2) During March through May 2019, claimant's permanent residence was in Klamath Falls, Oregon.

(3) Employers Overload's client, Guaranty RV, had a traveling RV show from March to October 2019. Beginning on March 5, 2019, claimant had temporary work assignments with Guaranty RV at its RV shows in Salem and Canby. Claimant traveled to Salem, and from Salem to Canby, for those shows. The employer did not provide housing. At first, claimant lived in a tent during the work assignments. He later began staying in a trailer purchased by one of Guaranty RV's supervisors for the "wash crew" to use as lodging. Transcript at 20. However, claimant moved out of the trailer because one of the other RV washers consumed alcohol "about every night" and became "very belligerent" toward claimant. Transcript at 23, 20.

(4) Claimant earned a net amount of \$480 to \$600 per week for the Guaranty RV show assignments. He earned \$12 per hour, but often worked overtime.

(5) On or about May 14, 2019, claimant complained to one of his two supervisors that he could not stay in the trailer with the worker who became belligerent when he drank. Claimant was afraid he and the other worker might get into a physical altercation. The supervisor told claimant that it would discharge the worker after the Canby show.

(6) On about May 16, 2019, claimant purchased a van. Claimant traveled to Hillsboro, Oregon to begin a work assignment at the next RV show for Guaranty RV. Hillsboro is over 280 miles from Klamath Falls.¹

(7) On May 20, 2019, claimant began the work assignment with Guaranty RV in Hillsboro. The show took place at a stadium. Guaranty RV had rented some spots in an RV park near the stadium. Guaranty RV did not discharge the RV washer who drank and became belligerent at night, and he continued to stay in the trailer purchased by the supervisor. Claimant therefore did not return to the trailer. Claimant tried to contact the supervisor who had told him Guaranty RV planned to discharge the washer, but was unsuccessful. Claimant complained to his onsite supervisor that the worker was “threatening.” Transcript at 26. The supervisor told claimant, “That’s not my problem.” Transcript at 26.

(8) Claimant was not willing to stay in the trailer with the belligerent worker, and planned to stay in his personal van in one of Guaranty RV’s rented spots until the show ended on June 2, 2019. Claimant stayed in his van for three nights, from May 20 through May 22, 2019. Claimant had the use of a portable toilet in the RV park.

(9) The evening of May 23, 2019, claimant’s onsite supervisor told claimant he had to move his van from the RV park. Because claimant’s van did not have the capacity to connect to the park’s sewer service, the site owners would not permit claimant to keep his van in an RV spot. Claimant moved to a grass area that was not an RV site.

(10) Claimant no longer had a tent, and the stadium and RV park did not permit tents. Claimant had no friends or relatives he could stay with near Hillsboro. Claimant looked for affordable lodging near the work assignment. A budget motel cost \$75 or \$100 per night. The closest park that would take claimant’s van was 21 miles away from his worksite for \$60 per night. The commute took two hours and cost \$20 per day round trip between the park and claimant’s worksite.

(11) Claimant preferred to shower every day. The park that would take claimant’s van charged \$13 to use its shower. There were no closer public showers. The stadium owners did not permit the RV show workers to use the stadium showers. Claimant also had additional food expenses that he would not have had if he lived at his own residence.

(12) The morning of May 24, 2019, claimant made several telephone calls to the employer’s emergency telephone number and stated that he had been told to leave the RV lot. When claimant did not hear from the employer, he called the employer leaving a message that he quit.

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 . .

¹ EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). 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 fact will remain in the record.

. 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). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to 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-137069 concluded that although claimant’s work situation was inconvenient, having to drive 40 miles per day and spend \$140 per week for fuel to drive to a public shower, was not a reason of such gravity that a reasonable person exercising ordinary common sense would have had no reasonable alternative but to quit.² The order reasoned that because claimant had net earnings of at least \$340 (\$480 - \$140) per week, while it may have been inconvenient to travel 40 miles per day to take a shower, claimant “had not established how he was better off financially” by quitting.³ However, the record shows that claimant left work with good cause.

At the time claimant quit work, he had already lived in a tent, a trailer with a “belligerent” coworker, and his personal van with no toilet or water connection for more than two months. At the Hillsboro RV show, claimant was not able to use a tent in the RV park, and claimant established that living in the “wash crew” trailer was not a safe situation for him. The record does not show if the stadium owners would have permitted claimant to continue parking his van in the grassy area where he parked on May 23, 2019. However, even if claimant were permitted to park his van near the RV park, his living situation was grave because he did not have a toilet, shower, or running water afforded him in the RV park. Moreover, no reasonable and prudent person would have continued to work for their employer while having to drive 40 miles per day to take a shower because no other public shower was located near his work. The implied assertion that claimant had to be “better off financially” to show good cause to quit misstates the good cause standard. There are many circumstances where a claimant has good cause to quit even though quitting does not leave them in a better financial situation.

Nor does the record show that claimant had a reasonable housing alternative that did not cost more than he knew he would earn. Claimant had no friends or family nearby. A hotel for \$75 per night would have exceeded the \$480 he could be reasonably certain to earn. Even had claimant lived in another RV park that would accept his van, his costs for rent, shower, and gasoline (\$93 per day) would have exceeded his net weekly earnings. Claimant therefore established that he had no reasonable alternative but to quit work when he did.

For those reasons, the record shows that claimant voluntarily left work for the employer with good cause. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 19-UI-137069 is set aside, as outlined above.

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

² Order No. 19-UI-137069 at 3.

³ Order No. 19-UI-137069 at 3.

DATE of Service: November 13, 2019

NOTE: 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.

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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