

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1145-R

Request for Reconsideration Allowed
EAB Decision 2019-EAB-1145 Adhered to on Reconsideration
Order No. 19-UI-139763 Reversed ~ No Disqualification

PROCEDURAL HISTORY: On August 24, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 90613). Claimant filed a timely request for hearing. On September 5, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 18, 2019. On September 18, 2019, ALJ F. Scott conducted a hearing at which the employer failed to appear, and on September 23, 2019, issued Order No. 19-UI-136947, concluding claimant voluntarily quit work with good cause. On October 9, 2019, the employer filed a timely request to reopen the hearing. On October 29, 2019 and November 13, 2019, ALJ Seideman conducted a hearing at which both claimant and the employer appeared, and on November 14, 2019 issued Order No. 19-UI-139763, granting the employer's request to reopen and concluding claimant voluntarily quit work without good cause. On December 4, 2019, claimant filed a timely application for review of Order No. 19-UI-139763 with the Employment Appeals Board (EAB).

On January 10, 2020, EAB issued EAB decision 2019-EAB-1145, allowing the employer's request for a reopening, but concluding claimant quit working for the employer with good cause. On January 25, 2020, the employer filed a timely request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: The employer's request for reconsideration is allowed. On reconsideration, we adhere to EAB Decision 2019-EAB-1145. Claimant quit working for the employer with good cause.

ORS 657.290(3) authorizes EAB to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with an Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement

that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Here, the employer's request for reconsideration included a statement that a copy was provided to claimant, and was filed fifteen days after EAB Decision 2019-EAB-1145 was mailed. The employer's request for reconsideration therefore is allowed.

The employer alleged in its request for reconsideration that the findings on which EAB based its conclusion that claimant quit work with good cause were untrue, contrary to the weight of the evidence, or based on hearsay and perjury on the part of claimant, and caused EAB to erroneously reach its ultimate conclusion that claimant quit work with good cause.

EAB is required by statute to conduct a *de novo* review "on the record," that is, to review cases based on the information parties provided to the ALJ at the hearing. ORS 657.275(2). Our *de novo* review of the record here establishes that claimant and the employer's witnesses disagreed regarding what had transpired with respect to most of the incidents at issue that caused claimant to quit. It also established that because the employer's witnesses often were not present during those incidents, and claimant's testimony was more detailed and often supported by contemporaneous calendar entries she had made and text messages from the owner she had kept, claimant's testimony had more probative value than that of the employer's witnesses. For that reason, EAB found facts in accordance with claimant's evidence, and did not err in doing so.

The facts as presented in the employer's request for reconsideration have been reviewed, the hearing record has been re-reviewed, and both have been compared to the Findings of Fact and Conclusions and Reasons in EAB decision 2019-EAB-1145. While it can be appreciated that EAB's findings and analysis might have benefited from inclusion of more detail or context, material errors of fact or law have not been identified. On the record before us, claimant met her burden to prove that she quit working for the employer with good cause.

DECISION: On reconsideration, EAB Decision 2019-EAB-1145, which concluded that claimant quit work with good cause, is adhered to, and that part of Order No. 19-UI-139763 which concluded claimant quit work without good cause remains reversed.

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

DATE of Service: February 4, 2020

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

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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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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