

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1156

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72007). Claimant filed a timely request for hearing. On November 20, 2019, ALJ Jarry conducted a hearing, and on November 21, 2019, issued Order No. 19-UI-140107, affirming the Department's decision. On December 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) HPS Construction Inc. employed claimant from 2015 until July 11, 2019 as a tower construction lead. During that time, claimant lived in Cornelius, Oregon, and worked in Troutdale, Oregon.

(2) Claimant was originally from Wallowa, Oregon, and most of his family, including his parents, sister, son and 4-year-old grandson, lived in Wallowa. It takes five to seven hours to drive from Troutdale to Wallowa.

(3) In July 2017, the mother of claimant's grandson was killed in an automobile accident. In 2018, claimant's son began asking claimant to move back to Wallowa to help care for his grandson. Claimant's son was unable to afford daycare expenses, so claimant's mother and the child's maternal grandmother sometimes provided childcare. Claimant's mother was retired.

(4) On July 4, 2019, claimant visited his family, including his son and grandson, in Wallowa. Claimant decided he would return to live in Wallowa to help his son care for claimant's grandson.

(5) Claimant returned to work and told some of his coworkers that he would leave work on July 11, 2019 to return to live in Wallowa. Claimant did not have other work.

(6) On July 11, 2019, claimant left work to return to live near his family, and to help his son care for his 4-year-old grandson.

CONCLUSIONS AND REASONS: Claimant quit 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). “[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.

Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). “Compelling family reasons” means the illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off. OAR 471-030-0038(1)(e). “A member of the individual’s immediate family” includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

Claimant did not quit work with good cause under OAR 471-030-0038(5)(g) because he did not leave work to care for his son or his grandson due to their illness or disability. Moreover, neither claimant’s adult son nor his grandson was a member of his immediate family, as defined under OAR 471-030-0038(1)(f). Claimant therefore did not quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e).

It is also necessary to determine if the record shows claimant quit work when he did with good cause under OAR 471-030-0038(4). The record does not show that claimant left work on July 11, 2019 with good cause. Claimant’s son was unable to afford daycare “by himself.” Audio Record at 21:42. To address the problem, claimant’s son received help from the child’s grandmothers. The record does not show that claimant’s grandson needed care that only claimant could provide, or that the grandchild’s grandmothers and father were unable to provide. The record does not therefore show that claimant faced a grave situation because his son could not afford other daycare or wanted claimant to help with daycare. Claimant’s preference to help his son was understandable, but he did not face a situation of such gravity that claimant had no reasonable alternative but to leave work when he did. Claimant quit work without good cause. He is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Order No. 19-UI-140107 is affirmed.

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

DATE of Service: January 7, 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

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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