

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0030

Reversed
Disqualification

PROCEDURAL HISTORY: On November 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision, concluding claimant voluntarily left work without good cause (decision # 112500). Claimant filed a timely request for hearing. On January 2, 2020, ALJ Wymer conducted a hearing, and on January 3, 2020 issued Order No. 20-UI-142074, concluding claimant voluntarily left work with good cause. On January 14, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer did not declare that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Rivergrove Water District employed claimant as a Utility I Intern from May 16, 2019 until October 3, 2019. The internship was originally scheduled to end at the end of September 2019.

(2) Prior to, and at the time of, his employment, claimant was a student at Clackamas Community College and he was the recipient of financial aid for this purpose. Claimant's weekly work-related expenses included those expenses associated with his 56.5-mile roundtrip to the worksite. Claimant also had cost of living expenses including two credit card payments, rent, utilities, and car insurance. In total, claimant's weekly expenses (both work-related and living) were approximately \$300 per week.

(3) When he started the internship, claimant worked less than full-time hours, however, he gradually transitioned to a 40-hour work week. During the weeks he worked full-time, claimant's gross pay was \$720 per week.

(4) During the month of August 2019, claimant had a conversation with the employer's District Manager regarding the prospect of extending his employment beyond the end of September 2019. During this discussion, the District Manager offered claimant work for two days per week starting in October 2019 and ending at the end of calendar year 2019. Claimant's gross pay for a two-day work week would be

\$288 per week. Claimant requested to be able to work three days per week. The District Manager informed claimant she would check the budget to see if three days per week would be feasible.

(5) During the week of September 22-28, 2019, the District Manager had a conversation with claimant to clarify that the employment offer would be for two days per week starting in October 2019. Claimant departed the worksite in order to give some thought to the offer.

(6) On October 3, 2019, claimant and the District Manager spoke again about the offer and it was mutually agreed between the parties that the employment would end that same day. Claimant turned down the offer of continued employment because he did not believe that he would earn enough working two days per week to cover all of his weekly expenses.

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). “[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. An individual who leaves work due to a reduction in hours has left work without good cause unless continuing to work substantially interferes with his return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

Order No. 20-UI-142074 concluded that claimant left work with good cause because the employer’s offer of further employment essentially would have reduced claimant’s hours from five days per week to two and that the \$288 of gross pay he would have earned working two days per week would not have covered his \$300 in weekly expenses. The order determined that claimant had met his burden in demonstrating that he left work with good cause pursuant to OAR 471-030-0038(5)(e) because his \$300 in living expenses exceeded the \$288 in gross pay he would earn working two days per week.

The record does not support the order’s finding that claimant left work with good cause. Claimant testified that his expenses included those costs associated with his 56.5 mile roundtrip travel to the worksite, along with car insurance, rent, utilities, and two credit card payments. Claimant estimated these expenses to total \$1200 per month, which breaks down to approximately \$300 per week. Yet, of these expenses, only the expenses related to his commute and a portion of his car insurance are expenses related to his “cost of working” for purposes of the “reduction in hours” analysis set forth in OAR 471-030-0038(5)(e). Claimant failed to meet his burden to establish that he left work with good cause based on a reduction of hours because he did not establish that his relevant costs of working exceeded the \$288 per week he stood to gain by working two days per week. Moreover, claimant failed to introduce any evidence supporting an argument that he left work with good cause because the proposed reduction in hours would have substantially interfered with a return to full time work, nor is there otherwise any evidence in the record which would support such a position.

Likewise, claimant did not otherwise meet his burden of demonstrating that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would leave work rather than accept an employment offer paying a gross weekly income of \$288 per week for two days work. While the proposed salary for two days of work would not have covered the entirety of claimant's weekly expenses (both living expenses and those that were work-related), claimant's decision to leave work left him with no work-related income, thereby deriving him no benefit from his decision to leave work. *Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work). Claimant failed to demonstrate that the disparity between the proposed salary he would receive working a reduced schedule and the amount of all of his expenses was a reason of such gravity that he had no reasonable alternative but to leave work.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 20-UI-142074 is set aside, as outlined above.

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

DATE of Service: February 10, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 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 الاستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.