

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0131

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83553). Claimant filed a timely request for hearing. On January 23, 2020, ALJ Snyder conducted a hearing, and on January 31, 2020 issued Order No. 20-UI-143744, affirming the Department's decision. On February 13, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Written Argument. Written argument was due on March 9, 2020 if the parties chose to submit written argument. On February 25, 2020, claimant requested an extension of time to file written argument regarding their application for review of Order No. 20-UI-143744. On February 28, 2020, EAB granted claimant's request to extend the time to file written argument until March 19, 2020. On March 19, 2019, claimant submitted written argument. EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Transition Projects Inc. employed claimant from November 2017 until November 15, 2019 as its only landlord liaison.

(2) While employed for the employer, claimant worked under a collective bargaining agreement (CBA) between the employer and AFSCME Local # 88-3, AFSCME Council 75 and AFL-CIO. Exhibit 1 at 1. The CBA defined a "layoff," in pertinent part, as "a separation from regular status employment or a significant reduction of work hours (a reduction of four (4) or more hours per week) initiated by [the employer] due to . . . insufficient funds available to maintain the current work force * * * . Exhibit 1 at 44. The CBA provided, "Employees in the layoff-recall status shall be recalled to their former

classification if a vacancy occurs while the employee is in the layoff-recall status.” Exhibit 1 at 44. The CBA also provided, “Laid off employees in the layoff-recall status may participate in [the employer’s] Internal Hire Process, but will not receive any special notification of job openings [except for their former classification]. An employee in the layoff-recall status shall be entitled to consideration for any open position or new position with [the employer] in the Internal Hire Process.” Exhibit 1 at 44-43.

(3) On October 28, 2019, the employer’s director of support services told claimant verbally and in a letter that due to a reduction in its funding, the hours for claimant’s position would be reduced from 40 to 20 hours per week after November 15, 2019. Exhibit 1 at 4. The employer gave claimant three options in response to the change: (1) accept the half-time position, but be unable to go into layoff-recall status; (2) apply for current open positions with the employer, and if selected for a position, be unable to go into layoff-recall status; or (3) go into layoff-recall status. Exhibit 1 at 4. The letter stated that, if claimant went into layoff-recall status, “if a Landlord Liaison position opens up within the next 18 months and you have maintained communication with the agency per the CBA, you will have 14 days to accept the recalled position. You may continue to apply for open positions while in Layoff-Recall status.” Exhibit 1 at 4.

(4) On November 1, 2019, claimant sent the employer an email stating that she chose the layoff-recall status option, reminding the employer that the CBA provided that an employee who was in layoff-recall status was entitled to consideration for any open position or new position with the employer. Exhibit 1 at 3. Claimant stated that she was “interested in this opportunity,” and would send the employer an updated resume. Exhibit 1 at 3.

(5) At the end of her shift on November 15, 2019, claimant went into layoff-recall status pursuant to the CBA.

CONCLUSIONS AND REASONS: Claimant is deemed laid off and not disqualified from receiving unemployment insurance benefits pursuant to ORS 657.176(11).

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.

However, ORS 657.176(11) provides the following:

(11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this section and shall be deemed laid off if the individual:

(a) Works under a collective bargaining agreement;

(b) Elects to be laid off when the employer has decided to lay off employees; and

(c) Is placed on the referral list under the collective bargaining agreement.

OAR 471-030-0125 (January 11, 2018) defines “referral list under the collective bargaining agreement” as the following”

[A] list of unemployed members in good standing maintained by a union/labor organization to which the worker belongs. The union/labor organization maintains the referral list for the sole purpose of selecting, notifying, directing and dispatching eligible members to job openings with employers who have a contract/collective bargaining agreement with that union/labor organization and, based on the agreement, only hire members of that union/labor organization referred by that union/labor organization to perform specific categories of job duties. A referral list does not include any list maintained by a union/labor organization solely for the purpose of rehire or recall to the worker’s former/current position.

Order No. 20-UI-143744 determined that claimant voluntarily left work without good cause, reasoning that ORS 657.176(11) did not apply to claimant’s work separation because the referral list was “solely for the purpose of rehire or recall to [claimant’s] former/current position,” of landlord liaison, and such a list was not a “referral list” as defined by OAR 471-030-0215 for purposes of ORS 657.176(11).¹ The plain language of the rule and claimant’s CBA do not support this conclusion.

Claimant’s CBA layoff rights were consistent with ORS 657.176(11) and OAR 471-030-0215, and therefore, claimant’s work separation was not disqualifying. The record shows that claimant worked for the employer under a collective bargaining agreement, chose to go into layoff-recall status when the employer decided to lay off employees, and was placed on the employer’s referral list. *See* ORS 657.176(11)(a), (b), (c). The next issue is whether the employer’s referral list was excluded from the meaning of “referral list” in ORS 657.176(11) because it was a list maintained “solely for the purpose of rehire or recall to the worker’s former/current position.” Claimant’s rights while under the CBA while in layoff-recall status included both the right to “be recalled to their former classification if a vacancy occurs,” and the right to “consideration for any open position or new position with [the employer] in the Internal Hire Process.” Because the referral list was not solely for the purpose of recall to the former position of landlord liaison, but also for the purpose of entitling claimant to consideration for any open or new position, the referral list was not excluded from the meaning of “referral list” in ORS 657.176(11). Because claimant met the requirements of ORS 657.176(11), claimant is deemed laid off and may not be disqualified from receiving benefits under ORS 657.176(2)(c), the general provision for a claimant who leaves work voluntarily.

Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

¹ Order No. 20-UI-143744 at 3.

DECISION: Order No. 20-UI-143744 is set aside, as outlined above.

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

DATE of Service: March 20, 2020

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

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