

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0152

Reversed & Remanded

PROCEDURAL HISTORY: On December 23, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits beginning on July 28, 2019 (decision # 110618). Claimant filed a timely request for hearing. On January 29, 2020, ALJ Amesbury conducted a hearing, and on February 4, 2020, issued Order No. 20-UI-143875, modifying the Department's decision to change the effective date of disqualification to August 4, 2019. On February 16, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Express Employment Professionals employed claimant as a cabin cleaner for its client, Diamond Lake Resort, from December 21, 2018 until August 5, 2019.

(2) Claimant rode a van provided by Diamond Lake Resort to go to and from Roseburg and the resort for work. Diamond Lake Resort had two employees as drivers for the van. Both drivers were on the van each time it traveled between Roseburg and the resort. Initially, the drivers alternated driving to and from the resort. One of the drivers drove in a satisfactory manner. The other driver drove in an unsafe manner, including hitting railroad tracks going at a high speed, "tailgating" other vehicles, "jerking the vehicle from side to side" and from lane to lane, driving at excessive speeds on corners, nearly colliding with other vehicles, and falling asleep while driving. Audio Record at 17:36 to 20:54. When riders complained to the unsafe driver, he became agitated and drove in a worse manner.

(3) Claimant complained to the owner of Diamond Lake Resort about the driver's driving and the owner told claimant the resort expected the two van drivers to alternate driving. The drivers did not consistently alternate driving after claimant complained and the unsafe driver's driving did not improve.

(4) Claimant and other riders complained to the employer about the driver's driving and the employer told claimant it would contact Diamond Lake Resort. The driver's driving did not improve after the complaints.

(6) There was only one Diamond Lake Resort van available for claimant to ride between Roseburg and the resort.

(7) During the week preceding August 5, 2019, the van nearly collided “head-on” twice with other vehicles while claimant was in the van. Audio Record at 18:44.

(8) Rather than continue to ride in the unsafe van, claimant quit work on August 5, 2019.

CONCLUSION AND REASONS: Order No. 20-UI-143875 is reversed and remanded to OAH for further development of the record.

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.

Order No. 20-UI-143875 found that claimant quit work because he “did not like the way in which the van driver operated the van that took him to work,” but implied that claimant’s circumstances were not grave because claimant would have been willing to continue working if the other driver drove one direction of his work commute.¹ The order concluded that claimant did not quit work with good cause because he did not describe a situation of gravity such that no reasonable and prudent person would have continued to work for their employer for an additional period of time.²

Claimant’s uncontested testimony established that he faced a grave situation if he were to continue riding the van for work. Even had the other, safer, driver driven more often, based on the record, the unsafe driver’s unsafe practices were unlikely to improve because unsafe driving practices like driving too fast and tailgating were not related to fatigue. The near-collisions claimant experienced occurred traveling in both directions, so probably were not attributable to fatigue. Moreover, despite claimant’s complaints, the drivers did not alternate driving. On remand, additional inquiry is necessary to establish if the unsafe driver’s driving improved on days that he drove only one direction.

The record does not show if claimant had reasonable alternatives to riding the resort’s van to work. For example, the record does not show if claimant had other transportation such as his own vehicle or carpool options, or if the cost of commuting to work and other work-related expenses would have exceeded what claimant earned if he did not ride in the resort’s van. The record does not show if claimant was required to use the resort van to travel to work. The record does not show if claimant rode the resort van only to and from work, or if he also rode the van to travel between worksites. If claimant rode the van between worksites, the record does not show if that travel time was paid. The record is also

¹ Order No. 20-UI-143875 at 2.

² Order No. 20-UI-143875 at 2.

unclear regarding how many times, when, and what claimant told Diamond Lake Resort and the employer about driver safety issues, and what, if anything, the resort or the employer did in response to those complaints.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant should be eligible for benefits, including whether claimant had reasonable alternatives to quitting when he did, Order No. 20-UI-143875 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-143875 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 25, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-143875 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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