

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0195

Modified
Disqualification

PROCEDURAL HISTORY: On January 6, 2020, 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, effective September 29, 2019 (decision # 133801). Claimant filed a timely request for hearing. On February 19, 2020, ALJ Frank conducted a hearing, and on February 21, 2020 issued Order No. 20-UI-144938, affirming the Department's decision. On March 4, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Valley Residential Services employed claimant from October 2, 2019 until October 8, 2019.

(2) In September 2019, claimant's mother passed away. At claimant's employment interview on September 24, 2019, claimant and the employer's hiring agent discussed claimant's need for flexibility while he was grieving and attending to the matters related to his mother's passing. The employer was willing to allow claimant time off and flexibility with his schedule.

(3) At hire, the employer informed claimant that it used Facebook messaging to communicate with employees about training and scheduling.

(4) The employer scheduled claimant to attend a mandatory training on October 3 and 4, 2019 to be a certified caregiver in Washington. On October 3, 2019, claimant completed the first day of training.

(5) On October 4, 2019, claimant attended the first two of four hours of training, but left the training to put his wife's dog into the house because he was unable to find another person to do it for him. Claimant returned to the class at 12:10 p.m., but the class had ended. Claimant spoke with the instructor, who he knew was not the employer's employee, and she told claimant he could complete the training in February 2020.

(6) Sometime between October 4, 2019 and October 7, 2019, claimant went to the employer's office to retrieve study materials for a test he had to take for the employer. Based on a conversation claimant had with an employer representative that day, claimant expected the employer to contact him "in a couple days" about whether the employer would give him continuing work. Audio Record at 24:20.

(7) On October 7, 2019, the employer's hiring agent tried to call claimant's telephone, but claimant's telephone was not in service. The employer scheduled claimant to attend classes each Tuesday for five consecutive Tuesdays, beginning on October 8, 2019. The employer's hiring agent sent claimant a message on its Facebook account stating that claimant should report for training on October 8, 2019. Claimant did report for the trainings or otherwise contact the employer until October 21, 2019.

(8) On October 21, 2019, claimant went to the employer's office to "return the mailbox key" and spoke with an employer representative. Audio Record at 25:12. The representative contacted the employer's hiring agent by telephone while claimant was in the office. Claimant spoke with the hiring agent, who asked claimant why he had not called the employer. Claimant said he had expected the employer to call him, and stated that he had not contacted the employer because he did not have a "working phone" for three weeks. Audio Record at 30:57. The hiring agent asked the other employee to make sure claimant submitted a timecard for his hours for the first two weeks of October. Claimant did not submit a timecard. The employer did not discharge claimant at that time.

(9) Claimant did not report to work or contact the employer again after October 21. Because claimant had not contacted the employer or reported for work, the employer processed claimant's work separation on October 28, 2019.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause. Order No. 20-UI-144938 is modified because claimant is disqualified from receiving unemployment compensation benefits effective October 6, 2019, not September 29, 2019.

Nature of the Work Separation. At hearing, the parties disagreed on whether claimant voluntarily left work or was discharged. Order No. 20-UI-144938 concluded that claimant voluntarily left work on October 4, 2019. The first issues to address are the nature and date of claimant's work separation.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

Claimant could have continued to work for the employer for several weeks after claimant contacted the employer for continuing work. The employer processed claimant's work separation on October 28 only because claimant did not contact the employer or report to work after he went to the employer's office on October 21. Although claimant showed a willingness to continue working by going to the employer's office in early October to obtain study materials, claimant did not respond to a Facebook message from the employer or contact the employer about work for the three weeks preceding October 21. The record

therefore shows that claimant could have continued working for the employer. Because claimant did not continue working for the employer after the employer notified him he was expected to return to work, beginning on October 8, the work separation was a voluntary leaving on that date.

Voluntary Leaving. 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.

The record shows that claimant did not have good cause to voluntarily leave work when he did. Claimant testified that he did not return to work after October 4, 2019 because he “never heard anything from” the hiring agent about whether the employer had continuing work for him. Audio Record at 24:22. However, claimant did not contest the employer’s testimony that he did not contact the employer until October 21. The employer told claimant at hire that it would communicate with him through Facebook messaging. It attempted to contact claimant by telephone and through Facebook messaging, and claimant did not respond. Thus, claimant’s assertion that the employer did not contact him was not a grave reason to leave work under the circumstances. We also presume that claimant faced scheduling and availability challenges due to the recent passing of his mother. However, the record does not show that those challenges posed a grave situation for claimant such that he had no reasonable alternative but to quit when he did, as the employer was willing to accommodate claimant’s need for flexibility in his schedule. Because the record does not show that claimant faced a situation of such gravity that he had no reasonable alternative but to leave work when he did, claimant did not show that he had good cause to leave work.

Because claimant did not have good cause to leave work on October 8, 2019, he is disqualified from receiving unemployment insurance benefits effective October 6, 2019.

DECISION: Order No. 20-UI-144938 is modified, as outlined above.

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

DATE of Service: April 9, 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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