

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0283

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving benefits beginning December 29, 2019 (decision # 90707). Claimant filed a timely request for hearing. On March 17, 2020, ALJ Snyder conducted a hearing, and on March 19, 2020, issued Order No. 20-UI-146559, affirming the Department's decision. On April 2, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties 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) Flashback Family Grill, LLC, employed claimant as a dishwasher from December 2019 to January 3, 2020. Prior to his start date, claimant applied for, and believed he had been hired for, a position working for the employer as a line cook. However, the employer did not allow claimant to start working until two weeks after his hire date and, upon his start date, the employer informed claimant that he would be working as a dishwasher.

(2) Claimant "immediately" informed the employer that his expectation was that he would be working as a line cook. Audio Record at 20:32. The employer responded that they would "wait and see" and that "eventually you can become a line cook." Audio Record at 21:12.

(3) The employer paid claimant bi-weekly; however, claimant never received a "punch in"¹ number for purposes of tracking his hours and he immediately began having concerns that his work hours were not being properly tracked by the employer.

¹ EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's February 21, 2020 request for a hearing challenging decision # 90707, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within

(4) On or about December 24, 2019, the employer provided claimant his first paycheck. The paycheck failed to reflect half of the hours claimant had worked and the amount of the check was “too small.” Audio Record at 16:00. Claimant informed his manager of the shortage of hours and money reflected in the paycheck, and his manager responded, “they would figure it out.” Audio Record at 18:21.

(5) Because of the paycheck shortage, claimant had difficulty paying his rent. He initially arranged with his landlord to “pay the rent in two halves,” and thought that the issue had been resolved. EAB Exhibit 1.

(6) On or about January 3, 2020, claimant reported for work and obtained his paycheck. The paycheck was again incorrect with respect to the hours claimant had worked. Later, claimant received a text message from his roommate that his belongings “were out in the rain on the street.” Audio Record at 19:14. Due to the stress caused by the situation with his belongings, and in light of the situation with his incorrect hours, his frustration over being a dishwasher instead of a line cook, and the delayed start date of his employment, claimant decided to quit working for the employment.²

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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.

The order under review concluded that claimant’s reasons for leaving work included his frustration over working as a dishwasher, and not a line cook, and his frustration with the paycheck errors he encountered. The order also made passing reference to the fact that on January 3, 2020, claimant received a text message from his roommate indicating that his personal belongings had been placed outside of his residence in the rain. According to the order under review, while these reasons for leaving work were “valid personal reasons,” they did not create “a situation so grave that he had no reasonable alternative but to leave work,” particularly where claimant had the option of asking the employer to leave work early on January 3, 2020, or seeking time off to address his housing situation. Order No. 20-UI-146559 at 2. The record evidence does not support the conclusion that claimant left work without good cause.

Claimant’s decision to leave work based on his frustration over washing dishes, as opposed to cooking, did not, standing alone, create a situation so grave that claimant had no reasonable alternative but to

ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

² After claimant quit, the employer provided claimant his final paycheck. As far as claimant could tell, his final paycheck paid him for the hours he had previously worked that had not been reflected on his prior paychecks.

leave work. He did not care for that work, and wanted different work, but he did not identify any factor suggesting that dishwashing work was unsuitable for him or that performing such work otherwise created a grave situation for him. Claimant's paycheck issues and the dire personal circumstances surrounding his personal belongings and housing situation; however, collectively created a grave situation, and no reasonable and prudent person would have continued to work for this employer under these circumstances for an additional period of time.

Claimant testified that from the beginning of his employment, he was concerned about whether the employer was accurately tracking his hours, and the record reflects that these concerns were validated when claimant received his first paycheck reflecting payment for half of the hours he should have been paid for. Claimant brought this payroll error to the attention of his employer and instead of responding with the immediate payment of the missing wages within three days, as the law requires³, the employer instead told claimant that "they would figure it out." The preponderance of the evidence demonstrates that this issue was not "figured out" by the time claimant quit his employment, and that the missing hours/wages directly contributed to problems in claimant's living situation in that he did not have sufficient funds to pay his monthly rent in its entirety.

On his last day of work, claimant received his second paycheck and once again discovered that it was short both hours and pay. He also received a text message reflecting that his living situation (which had been directly impacted by the employer's payroll errors) had now worsened, with claimant's personal belongings being placed in the street while it was raining. These circumstances, when considered collectively, constitute a reason of such gravity that no reasonable and prudent person would have concluded that they had any alternative but to leave work at that moment. Under the totality of these circumstances, where the record evidence reflects that the employer failed to timely address claimant's payroll concerns, and the employer's omissions on this issue directly contributed to claimant's housing-related stress and potential loss or ruination of his personal belongings if he did not immediately retrieve them, no reasonable and prudent person would have believed that asking the employer for additional time off would have changed the situation for the better. The preponderance of the evidence demonstrates that claimant's only reasonable alternative was to leave his employment.

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

DECISION: Order No. 20-UI-146559 is set aside, as outlined above.

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

DATE of Service: May 1, 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.

³ ORS 652.120(5)

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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