

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0311

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 16, 2020 (decision # 75759). Claimant filed a timely request for hearing. On April 13, 2020, ALJ Snyder conducted a hearing, and on April 16, 2020 issued Order No. 20-UI-148223, affirming the Department's decision. On April 22, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument in support of his application for review. However, 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Even if EAB had considered claimant's argument, it would not have changed the outcome of this decision. Claimant asserted, "The government funded an unemployment stimulus package to help out-of-work people... [and]...I feel I fit in that category." However, OAR 471-030-0070 (March 17, 2020), which contains Oregon's COVID-19 related unemployment insurance provisions, specifically provides that "the provisions of this rule apply retroactively to March 8, 2020, when the statewide emergency was declared." Here, claimant's work separation occurred on February 20, 2020, during the week for which claimant filed his first continued claim for benefits, both of which occurred prior to March 8, 2020. Regardless, the work separation provisions of the rule would not have changed the outcome in this case because the record fails to show that claimant quit work "because of a COVID-19 related situation." *See* OAR 471-030-0070(2)(b).

FINDINGS OF FACT: (1) Mt. Hood Meadows Oregon LTD employed claimant as a lift operator, last from November 19, 2019 to February 20, 2020.

(2) Beginning in 2017, claimant worked for the employer during the ski season, which typically began in November and ended sometime in April of the following year, when the employer would lay him off work. Claimant usually sought other seasonal work with the Port of Hood River (PHR), which typically hired him shortly after his layoff with the employer to work through the summer months and into the fall.

(3) On or about February 15, 2020, claimant gave the employer two weeks' notice of his intent to leave work. He was resigning "a little bit sooner" than usual that year because he "had the prospect of going back to work for [PHR]." Audio Record at 11:45 to 12:45. Claimant left work with the employer on February 20, 2020, before the end of his notice period.

(4) When claimant quit work with the employer, he expected to be rehired by PHR sometime in March. However, after claimant left work with the employer, he received an email from his usual supervisor at PHR that the earliest he would be rehired would be April 1, 2020. Thereafter, PHR did not rehire claimant.

(5) On February 20, 2020, claimant quit work with the employer because he expected to be rehired by PHR sometime in March 2020.

CONCLUSIONS AND REASONS: Claimant quit 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. If an individual leaves work to accept an offer of other work, good cause exists only if, among other things, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. *See* OAR 471-030-0038(5)(a).

Claimant quit work with the employer on February 20, 2020 because he expected to begin work with PHR on some indefinite date in March 2020. However, claimant failed to show that quitting work for that reason constituted good cause under OAR 471-030-0038(4). That rule requires that the reason for leaving work constituted a circumstance of such gravity that he had no reasonable alternative but to leave work when he did. On this record, claimant had the reasonable alternative of continuing to work as a lift operator for the employer until it laid him off at the end of the ski season when it normally did or until claimant received a verified start date with PHR.

Claimant also failed to show that quitting work because he expected to begin work with PHR on some indefinite date in March 2020 constituted good cause under OAR 471-030-0038(5)(a). Claimant's anticipated work with PHR was not going to begin until March 1, at the earliest, and claimant failed to show that he could not have continued to work for the employer for at least another nine days in February or until shortly before he received a definite start date to begin his seasonal PHR job.

Accordingly, claimant failed to show that the anticipated work with PHR was set to begin in the shortest length of time reasonable under the circumstances, as required under OAR 471-030-0038(5)(a). Thus, to the extent claimant quit work to accept an offer of that other work, he failed to establish that he quit work with good cause.

In sum, claimant failed to establish that he quit working for the employer with good cause, and therefore he is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 20-UI-148223 is affirmed.

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

DATE of Service: May 14, 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 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 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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