

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0378

Modified
Late Request for Hearing Allowed
No Disqualification

PROCEDURAL HISTORY: On February 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 January 5, 2020 (decision # 93335). On March 4, 2020, decision # 93335 became final without claimant having filed a timely request for hearing. On March 10, 2020, claimant filed a late request for hearing.

On March 12, 2020, ALJ Kangas issued Order No. 20-UI-146078, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by March 26, 2020. Claimant timely responded to the questionnaire. On March 31, 2020, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 20-UI-146078 was vacated and a hearing would be scheduled. On April 7, 2020, OAH mailed notice of a hearing scheduled for April 22, 2020.

On April 22, 2020, ALJ Williams conducted a hearing at which the employer failed to appear, and on April 27, 2020, issued Order No. 20-UI-148818, allowing claimant's late request for hearing but concluding that claimant voluntarily quit work without good cause and affirming decision # 93335. On May 12, 2020, claimant filed a timely application for review of Order No. 20-UI-148818 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant's late request for hearing was allowed is **adopted**. The remainder of this decision will address whether claimant voluntarily quit work without good cause.

FINDINGS OF FACT: (1) The US Postal Service employed claimant as a part-time rural carrier assistant from January 2019 to January 6, 2020.

(2) Claimant was told at hire that her work schedule as a part-time mail carrier was intended to be one full day per week. A full day of work consisted of making all of the mail deliveries required for the day no matter how long it took. One of the expectations of the job was to finish the deliveries on the carrier's assigned route and then stay to help the other carriers finish the deliveries on their assigned routes. Help was expected to be given or received depending upon the volume of mail for the assigned route.

(3) Over the period of her employment, claimant averaged approximately 50-55 hours per week. Sometimes when she needed help to finish her route based on the volume of mail she had to deliver, no help was given, which caused her to experience extreme frustration and stress. Near the end of her employment, claimant ended up working six days per week and 14 hours per day. On those days, she cried on the way home from work because it was becoming too physically and emotionally stressful for her to function at work and care for her family outside of work.

(4) Claimant looked into the possibility of transferring to a post office that was less busy but that option was unavailable to her because she had not yet been employed long enough to qualify for a transfer. She also investigated the option of working a different job at her assigned post office but no openings were available. Claimant spoke to her supervisor several times about her exhaustion and emotional distress but he only told her to remain in communication, and did not offer other assistance.

(5) On January 6, 2020, claimant quit her job after concluding that it had become too physically and emotionally stressful for her to function both in and outside of work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Order No. 20-UI-148818 concluded that although claimant faced a grave situation at work, she quit work without good cause because she had reasonable alternatives to quitting, reasoning:

Claimant consulted with her supervisor, who told her to continue to communicate with him, but could not offer other assistance. Claimant looked into transferring to a different position and post office; but did not discuss these alternatives to quitting with her supervisor or ask for his assistance with these alternatives. The record does not show that claimant explored other available alternatives outside of a location or job transfer...Claimant faced a grave situation, but had reasonable alternatives to quitting. Thus, claimant...has not established that she had good cause to quit.

Order No. 20-UI-148818 at 4.

The record supports the order's conclusion that claimant's situation was grave. Claimant explained, "[I]t just got to be too much in being expected to be there six days per week and such long hours and then maintain family life outside of it as well...It got to the point toward the end of it where I was getting in my car and crying all the way home...It just got to be too physically and emotionally stressful for me to be able to function as a human being both in and outside of work." Audio Record at 28:40 to 29:30. Viewed objectively, being expected to work and working that many days and hours per week to the extent that it caused an employee to cry each day on the way home from work would create a grave situation for any reasonable part-time mail carrier in claimant's circumstances.

However, the record does not support the order's conclusion that claimant had reasonable alternatives to quitting when she did. Claimant spoke to her supervisor several times about her exhaustion and emotional distress but he only told her to remain in communication without offering any assistance or potential solutions. When claimant looked into the possibility of a transfer to a less busy post office, she learned that she did not qualify for a transfer because she had not worked for the employer long enough. When claimant looked into the possibility of a transfer to a different position at her assigned location, she learned that no openings were available. Claimant exhausted her known and reasonable alternatives to quitting work. Although the order concluded that claimant had not explored other available alternatives outside of a location or job transfer, the record fails to show that any other reasonable alternatives to quitting existed.

Claimant demonstrated good cause for leaving work when she did and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Order No. 20-UI-148818 is modified, as outlined above.

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

DATE of Service: June 5, 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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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