

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0418

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 19, 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 December 15, 2019 (decision # 85115). Claimant filed a timely request for hearing. On May 6, 2020, ALJ Shoemake conducted a hearing, and on May 13, 2020 issued Order No. 20-UI-149671, modifying the Department's decision and concluding that the employer discharged claimant not for misconduct within fifteen days of claimant's planned quit without good cause, and was disqualified from receiving benefits effective December 29, 2019. On May 23, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Urban League of Portland employed claimant as a business partnership specialist from March 29, 2019 until December 20, 2019.

(2) Claimant expected his position to end in December 2019 because the grant that funded his position was ending at the end of 2019.

(3) The employer wanted claimant to continue in a different position after December 2019, either as a membership coordinator or in another role. The employer did not make a formal offer of other work to claimant by December 10, 2019.

(4) On December 10, 2019, claimant gave written notice to the employer that he would resign from his position on January 3, 2020. In response to his letter of resignation, the employer's director of operations (director) asked claimant to meet with her on December 12, 2019 to "discuss [claimant's] transition." Audio Record at 8:52.

(5) On December 12, 2019, claimant and the director met. Claimant told the director he had submitted his resignation because the employer had discharged other employees recently and claimant was afraid the employer would also discharge claimant before the end of December. The director told claimant, "That [has] nothing to do with [you]." Audio Record at 9:27 to 9:28.

(6) The director told claimant that his last day would be December 20, 2019. The employer's decision to end claimant's employment on December 20, 2019 was based on a "business decision" by the employer, and was not based on claimant's conduct or performance. Audio Record at 14:00 to 15:10.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct, within fifteen days of claimant's planned quit without good cause. Claimant is disqualified from receiving unemployment insurance benefits effective December 29, 2019.

The first issue in this case is the nature of the 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). On December 10, 2019, claimant notified the employer that he was quitting work effective January 3, 2020. However, on December 12, 2019, the director told claimant his last day of work would be December 20, 2019. Because claimant was willing to continue working for the employer until January 3, but was not allowed to do so by the employer, the work separation was a discharge that occurred on December 20.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (December 23, 2018). The record shows that the employer discharged claimant on December 20 as a "business decision" that was not attributable to claimant's conduct or performance. Therefore, the employer did not discharge claimant for conduct that was a willful or wantonly negligent violation of standards of behavior the employer had the right to expect of claimant. Accordingly, the employer discharged claimant on December 20 not for misconduct.

However, ORS 657.176(8) provides that, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall

be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

Claimant gave notice of his planned quit on December 10, 2019. The employer then discharged claimant, not for misconduct, on December 20, 2019, less than 15 days prior to his planned quit date of January 3, 2020. Therefore, to determine if ORS 657.176(8) applies to this case, it is necessary to determine whether claimant's planned quit would have been with or 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). "[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.

Claimant testified that he quit work because he thought the employer might discharge him before the end of December 2019, and he thought he would "protect himself" from being discharged before the end of December if he gave notice to quit. Audio Record at 7:34 to 9:28. However, the record does not show that claimant faced a grave situation such that no reasonable and prudent person would have continued to work for their employer for an additional period of time. Claimant's firsthand evidence that the employer made no formal offer of work outweighed the employer's hearsay evidence that the employer offered claimant work after December 2019. However, the record shows that the employer wanted claimant to continue working for the employer after December 2019, as either a membership coordinator or in another role. That the director told claimant the early discharges, "had nothing to do" with claimant corroborates the employer's intention to continue claimant's employment. Continuing work was more than a mere possibility, and claimant foreclosed that opportunity by giving notice to quit when he did. The record does not show that claimant's concern that the employer might discharge him before the end of December posed a situation of such gravity that claimant did not have the reasonable alternative of exploring continuing work options with the employer before he quit. Because the record does not show that no reasonable and prudent person would have continued to work for the employer for an additional period of time, claimant quit work without good cause.

Because claimant's planned quit on January 3, 2020 would have been without good cause for the reasons stated, ORS 657.176(8) applies to this case. To summarize, claimant notified the employer of his intention to quit work without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits, effective December 29, 2019, and until he requalifies for benefits pursuant to ORS 657.176(2), but is eligible for benefits for the weeks including December 15, 2019 through December 28, 2019, which are the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

DECISION: Order No. 20-UI-149671 is affirmed.

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

DATE of Service: June 29, 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 desisyong ito.

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.

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