

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0541

Modified
No Disqualification

PROCEDURAL HISTORY: On October 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause, and was disqualified from receiving benefits effective July 14, 2019 (decision # 151612). On November 12, 2019, decision # 151612 became final without claimant having filed a timely request for hearing. On May 3, 2020, claimant filed a late request for hearing. On May 27, 2020, ALJ Kangas issued Order No. 20-UI-150257, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by June 10, 2020. On June 11, 2020, claimant filed a late response to the questionnaire and a timely application for review with the Employment Appeals Board (EAB). On June 17, 2020, ALJ Kangas mailed a letter stating that claimant's appellant questionnaire response was late and therefore would not be considered. The matter came before EAB based upon claimant's timely application for review of Order No. 20-UI-150257. On June 25, 2020, EAB issued Decision No. 2020-EAB-0481, reversing Order No. 20-UI-150257 and remanding the case to OAH for further proceedings.

On July 13, 2020, ALJ Griffin conducted a hearing, and on July 14, 2020 issued Order No. 20-UI-152173, concluding that claimant had good cause for filing a late request for hearing, and that he voluntarily left work without good cause. On July 21, 2020, claimant filed an application for review of Order No. 20-UI-152173 with EAB.

FINDINGS OF FACT: (1) Claimant began working for the United States Postal Service (the employer) as a non-career letter carrier associate in May 2019 and voluntarily quit on July 15, 2019.

(2) Claimant found his work as a mail carrier stressful. He found the employer's productivity standards both physically and emotionally challenging, and often had to work up to nine consecutive days due to understaffing at the branch at which he worked.

(3) Claimant's long working hours and stress at work caused or contributed to conflict in his family life. Claimant's wife was at the time the sole caregiver for the couple's young child, and she expressed to claimant that she was overwhelmed and wanted more parenting support. Claimant's wife was suffering from depression, which he believed would be alleviated if he made himself more available for childcare duties.

(4) An Employment Assistance Program (the EAP) was available to claimant through the employer. Claimant discussed the stress he was experiencing—and using the EAP services—with the local union and some of his coworkers, but did not avail himself of the EAP's services.

(5) On July 1, 2019, claimant tendered his resignation to the employer, with an effective date of July 15, 2019. In response, the employer asked claimant to complete several standard forms, including Form 2574 (voluntary resignation). On Form 2574, claimant checked several boxes indicating his reasons for resignation, including "Job was not in line with career plans," "No promotion opportunities," "Work hours not compatible," "Health reasons, self," "Health reasons, family," and "Work is too hard." Transcript at 45.

(6) Claimant received notice of decision # 151612 over the phone sometime in October or November 2019. EAB Exhibit 1 at 1. On October 30, 2019, claimant contacted the Department via phone to request assistance filing a request for a hearing on the decision. EAB Exhibit 2. A representative for the Department provided claimant with OAH's phone number; they also attempted to provide claimant with an e-mail address for OAH, but claimant refused it. EAB Exhibit 2. The representative indicated that claimant could request a hearing by calling the OAH number. Transcript at 9.

(7) Claimant called the OAH number twice but was unable to reach a person who would process his appeal. Out of frustration, claimant gave up on the appeals process.

(8) Claimant restarted his claim on April 6, 2020. Transcript at 13. Around that time, he found that decision # 151612 continued to adversely affect his eligibility for benefits. Transcript at 27-28. While attempting to obtain information from the Department regarding the ongoing denial, claimant discovered the e-mail address that the Department designated for hearing requests. Transcript at 30-31. Claimant e-mailed his late request for hearing on May 3, 2020, almost immediately after he discovered the email address. Transcript at 31.

CONCLUSIONS AND REASONS: Claimant had good cause for filing a late request for hearing, and quit work for good cause.

Late Request for Hearing. ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

Claimant attempted to file a request for hearing on decision # 151612 eight days after it was issued, which was prior to the timely appeal deadline set forth in ORS 657.269. However, the Department

representative provided incorrect information to claimant during the October 30, 2019 call: OAH was not, at that time, permitted to accept hearing requests for unemployment insurance decisions. Transcript at 10. When claimant called OAH and reached an apparent dead-end in the appeals process, he gave up his efforts to appeal the decision, mistakenly believing that any such efforts would be futile. That mistaken belief was excusable because he reasonably relied on another (the Department representative), and their incorrect information led to his conclusion that the effort was futile. When claimant finally discovered the proper channel for filing his request for hearing (the e-mail address designated by the Department), he filed the request “pretty much right away.” Transcript at 31. Although the record does not indicate exactly how much time passed between claimant’s discovery of the email address and his filing of the late request for hearing, it is reasonable to infer from his testimony that he did so on the same day. As this is within the seven-day period permitted per OAR 471-040-0010(3), claimant filed his request within a reasonable period of time after the circumstances that prevented him from timely filing ceased to exist, and he therefore had good cause to file the late request for hearing.

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 order under review found that “claimant... left employment with the postal service for several reasons, none of which were sufficiently grave to constitute good cause,” including the rate of pay, the pace of promotions, the physically-demanding nature of the work, and concerns regarding his wife’s mood and childcare duties. Order No. 20-UI-152173 at 5. It further concluded that, “On the whole, claimant found his work at the postal service to be too stressful.” Order No. 20-UI-152173 at 5. In discussing reasonable alternatives to that issue, it purported that multiple stressors combined to lead to one generalized problem that led claimant to quit. Order No. 20-UI-152173 at 5. While that may be true, the record suggests that the most important factor in claimant’s decision to quit was actually the job’s effects on his family life.

For instance, claimant testified that in checking the box “Health, self,” on Form 2574 to indicate a reason for quitting, he was referencing a potential repetitive-motion injury that he believed he had developed on the job as a result of quickly opening and closing mailboxes. Transcript at 54. Claimant testified, however, that while it “did feel like, as [he] worked more and developed the muscle memory... it did become easier in some ways,” he felt that he still could not work through the difficulty “...because of the problems at home compounding everything.” Transcript at 56-57.

Similarly, while claimant had indicated on Form 2574 that pay was a reason for quitting, he also confirmed that his rate of pay as a letter carrier had been about \$17 per hour. Transcript at 58-59. Claimant had previously earned about \$15-\$20 per hour as a substitute teacher or classroom aide, and believed that, had he returned to educational work after quitting the postal service, he would have likely

worked two to three days per week¹. Transcript at 58-59. This suggests that while claimant might have been dissatisfied with what the employer paid him, given the disparity in hours between the two occupations he stood to earn roughly the same—if not less—from educational work, and therefore was unlikely to have been primarily motivated to quit work for this reason.

By contrast, the employer’s witness (the postmaster of claimant’s branch) testified that claimant had told her that the primary reason for quitting was that he “just felt overworked at the time”; that claimant “was more concerned that he was having a family issue at the time”; and that the witness herself “was concerned about what was going on with him in that domestic issue ‘cause he was... shaken emotionally.” Transcript at 49-50.

Although claimant did not conclusively testify to any one factor being the primary reason that he quit, it is reasonable to conclude from both claimant’s and the employer’s testimony, cited above, that the primary reason was the effect that his working hours and increased levels of stress had on his family life. Claimant testified that his wife wanted him to work less; that she felt overwhelmed and wanted him to provide more support with parenting duties; and that when he had previously worked only three days a week as a substitute teacher, his wife was “relatively happy.” Transcript at 51, 53. In other words, claimant quit primarily in order to address strife that had arisen in his marriage and ensure that his young child had adequate care. The need to improve such issues with his family constituted a circumstance of sufficient gravity that a person of reasonable and ordinary prudence would not have continued to work for the employer.

Further, while Order No. 20-UI-152173 suggested that there were “...avenues available to [claimant] to assist him in alleviating some stress, such as the EAP,” that claimant did not pursue, the record does not support the conclusion that such avenues were reasonable alternatives to quitting. In fact, the record contains no discussions of *any* potential alternatives other than the EAP that might have been available to claimant. As to the latter, while it is possible that the EAP might have offered claimant some coping strategies for his stress or similar aid, there is no indication that the program could have assisted with the apparent underlying problem: claimant’s schedule that kept him away from his family for too long. As such, making use of the EAP would not have been a reasonable alternative to quitting.

For those reasons, claimant quit work with good cause. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 20-UI-152173 is modified, as outlined above.

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

DATE of Service: August 20, 2020

¹ Claimant testified to his belief at the time he quit that he would likely be able to return to educational work. The reasons that claimant did not return to such work, however, are not germane to the issues before EAB and therefore not discussed further.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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