

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0600

Modified
Benefits Allowed in Part, Denied in Part

PROCEDURAL HISTORY: On July 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause, and was disqualified from receiving benefits effective May 31, 2020 (decision # 112155). Claimant filed a timely request for hearing. On August 31, 2020, ALJ Micheletti conducted a hearing, and on September 1, 2020 issued Order No. 20-UI-153531, affirming the Department's decision. On September 4, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Portland Bottling Company employed claimant as a night-shift quality assurance laboratory technician at their Couch Street location from March 26, 2019 to June 4, 2020.

(2) In early 2020, the employer notified claimant that they were moving some operations from the Couch Street location to a location in Clackamas in May 2020. The employer notified claimant that her position was moving to the Clackamas location, and continuing work would not be available to her at the Couch Street location after the move.

(3) Claimant determined that if she transferred to the Couch Street location her commute would take two hours, involve four different forms of public transportation and a significant amount of walking, and that she would have to arrive at work an hour early and wait an extra hour at the end of her shift to catch available public transportation. Claimant determined that it was not feasible to add a two-hour commute and two-hour wait time to her workdays, and notified the employer she would not be able to transfer to the Clackamas location. The employer was ending night-shift work at the Couch Street location so claimant could no longer work the night shift at Couch Street; the employer did not have day shift work available to claimant at the Couch Street location.

(4) Because claimant was unable to commute to the Clackamas location and the employer would not have continuing work for claimant at the Couch Street location, claimant and the employer agreed claimant's last day at work would be her night-shift that began on May 13th and ended the morning of May 14th, when the employer planned to move operations from Couch Street to Clackamas.

(5) On May 12, 2020, the employer notified claimant that they were continuing Couch Street operations another week and asked claimant if she would continue to work through her night shift beginning May 20th and ending May 21st. Claimant agreed, and continued to work the extra week.

(6) On May 18, 2020, the employer notified claimant that they were continuing Couch Street operations another week and asked claimant if she would continue to work through her night shift beginning May 27th and ending May 28th. Claimant agreed, and continued to work the extra week.

(7) On May 27, 2020, the employer notified claimant that they were continuing Couch Street operations another week and asked claimant if she would continue to work through her night shift beginning June 3rd and ending June 4th. Claimant agreed, and continued to work the extra week.

(8) On June 1, 2020, claimant confirmed that her last day with the employer would be at the end of her night shift on June 4th. On June 2, 2020, the employer responded with information about claimant's final check, her post-employment access to pay stubs, continuation of benefits, and turning in her badge/timecard and other company property when she left.

(9) During claimant's final planned shift on June 3, 2020, the employer notified claimant that they were continuing Couch Street operations another week and asked claimant if she would continue to work through a new prospective end date, which was her night shift beginning June 10th and ending June 11th. Claimant responded that she would not, and that "the agreed upon date of my layoff is the evening of June 3/morning of June 4." Exhibit 1 at 3. The employer replied that they would "accept your email as your formal resignation," process claimant's final check on June 4th, and have it couriered to her home address. Exhibit 1 at 2.

(10) On June 4, 2020, claimant finished her shift and did not return to work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause within 15 days of her planned voluntary leaving 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) (September 22, 2020). "[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.

ORS 657.176(6) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The separation would be for reasons that constitute good cause; (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary

leaving, then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.”

Claimant planned to leave work with good cause on a date mutually-agreed upon with the employer. That prospective quit was with good cause because no reasonable and prudent person would likely have been willing to transfer to a location that would necessitate a two-hour daily commute plus a two-hour daily wait time. The parties mutually agreed to postpone the date of the good-cause quit on several occasions. However, when offered the option to extend the mutually-agreed upon date a fifth time, claimant declined, leaving work a week prior to her new prospective good-cause quit date. Claimant’s actual voluntary leaving occurred on June 4th and was without good cause. Any reasonable and prudent person would likely have agreed to extend the date of the mutually-agreed upon end of her employment another week, taking the extra week of work instead of choosing to become unemployed sooner than she had to. Because claimant voluntarily left work on June 4th without good cause, within fifteen days of the date of a prospective voluntary leaving with good cause, she is disqualified from receiving unemployment insurance benefits through the week ending June 6th. The disqualification ends effective June 7th, during the week of claimant’s prospective good-cause quit. *See* ORS 657.176(6).

DECISION: Order No. 20-UI-153531 is modified, as outlined above.¹

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

DATE of Service: September 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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¹ This decision partially 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.



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.

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