

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0619

Reversed
Disqualification

PROCEDURAL HISTORY: On July 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work for good cause (decision # 123649). The employer filed a timely request for hearing. On September 9, 2020, ALJ Wyatt conducted a hearing, at which claimant failed to appear, and on September 16, 2020 issued Order No. 20-UI-154043, concluding that claimant quit work for good cause. On September 18, 2020, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) C & K Market, Inc. (the employer) employed claimant from July 2, 2018 until April 3, 2020. Claimant worked part-time as a deli clerk.

(2) Claimant last worked for the employer on March 29, 2020. She called out sick on March 30, 2020 and March 31, 2020.

(3) Claimant was next scheduled to work on April 3, 2020. Instead, on April 3, 2020, claimant called her manager and told her that she was quitting “due to COVID.” Audio record at 6:10 – 6:40. Claimant gave the employer no further details regarding why she quit.

(4) Prior to quitting, claimant did not inform the employer about any health conditions that could affect her ability to work with the public. Had claimant done so, the employer would have been willing to offer claimant accommodations, such as changing her schedule or assigning her to primarily work in the back of the premises where she was less likely to come in contact with members of the public.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes the following:

- (a) A person is unable to work because they are ill with the novel coronavirus;
- (b) A person is unable to work because they have been potentially exposed to the novel coronavirus and have been subjected to a mandatory quarantine period;
- (c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;

* * *

The order under review concluded that claimant quit with good cause because, as she had a “possible increased risk of contracting Covid-19 [sic],” her “circumstances were urgent and exigent, and involved potentially deadly consequences.” Order No. 20-UI-154043 at 2. To support this conclusion, the order asserted that claimant “chose to resign fearing that her pre-existing medical conditions put her at increased risk of contracting Covid-19 [sic].” Order No. 20-UI-154043 at 2. Claimant did not appear at the hearing or otherwise offer any evidence into the hearing record, however, and the employer did not testify to this fact. Rather, it appears that this finding was drawn inferentially from decision #123649, which had found that claimant quit work because she was “concerned with catching Covid-19 [sic] due to having asthma and being at higher risk.”

Although it is possible that this inference is factually accurate, the administrative decision is not evidence from which findings of fact or conclusions of law can be drawn. Because claimant did not appear at the hearing, the only evidence upon which this decision may be based is the employer’s hearing testimony. That testimony does not establish that claimant was unable to work because she was ill with COVID-19, that she had been potentially exposed to COVID-19 and subjected to a mandatory quarantine period, or that she was advised by her health care provider or public health officials to self-quarantine. Thus, despite the employer’s testimony that claimant quit “due to COVID,” the evidence on the record does not support the conclusion that claimant quit for a “COVID-19 related situation” as defined in OAR 471-030-0070(1).

Instead, the question of whether claimant quit for good cause must be considered under the standard good-cause analysis of OAR 471-030-0038(4). Claimant thus bears the burden to prove that the reason she quit was sufficiently grave, and that she had no reasonable alternative but to quit. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000) (in a voluntary leaving case, claimant

has the burden of proving good cause by a preponderance of the evidence). Based on the facts in the record, claimant has not met her burden. The record only establishes that claimant had been ill prior to quitting, and that she quit due to some unnamed circumstance related to COVID-19. Without a clearer account of the specific circumstances that led claimant to quit, the record cannot support a finding that claimant quit work for good cause.

Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits, effective March 29, 2020.¹

DECISION: Order No. 20-UI-154043 is set aside, as outlined above.

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

DATE of Service: October 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.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.

¹ This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.



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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