

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0642

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 30, 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 benefits effective January 26, 2020 (decision # 142708). Claimant filed a timely request for hearing. On September 8, 2020, ALJ Snyder conducted a hearing, and on September 16, 2020 issued Order No. 20-UI-154047, affirming decision # 142708. On October 1, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's argument to the extent it was relevant and based upon the record. EAB also received argument from claimant; however, claimant did not declare that he provided a copy of the argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). Even if EAB had considered claimant's argument, the outcome of this decision would remain the same for the reasons explained herein.

FINDINGS OF FACT: (1) Animal Rescue Center employed claimant as its director from March 2012 to January 30, 2020.

(2) Claimant lived and worked for the employer in La Grande, Oregon, located over 300 miles from Salem, Oregon.¹ Claimant lived at the employer's facility and had a flexible work schedule; however, much of claimant's work was performed on-site.

¹ EAB has taken notice of the distance between La Grande, Oregon and Salem, Oregon, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at: <https://www.google.com/maps/dir/La+Grande,+OR/Salem,+OR>. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(3) In approximately 2019, claimant's mother was the victim of a financial scam and lost approximately \$70,000. Claimant's mother then moved to Salem to live with claimant's brother and sister-in-law. Claimant, his brother, and his sister-in-law were concerned about their mother's safety when the brother and sister-in-law left her alone at their home.

(4) Later in 2019, people trespassed and unsuccessfully tried to get their mother to leave with them. Claimant, his brother, and sister-in-law suspected that those individuals had attempted to abduct their mother, and were concerned that they were part of the earlier scam. People involved in the scam also continued to call her.

(5) After the scam happened, claimant began to travel frequently between La Grande and Salem to help his mother while his brother and sister-in-law were away from their home. Claimant performed some work while away from the employer's facility, but could not perform all of his duties remotely.

(6) Claimant's mother intended to move into her own mobile home in Salem, Oregon. Claimant and his family were concerned about their mother's safety living alone, and claimant's brother and sister-in-law could not continue to provide the same level of support for claimant's mother after she moved out. Claimant agreed that he could move to Salem to live with his mother.

(7) On January 1, 2020, claimant notified the employer that he was quitting his job effective January 30, 2020 to spend more time in Salem with his mother.

(8) Claimant quit his job as planned. After quitting his job, claimant found a new residence in La Grande and continued to reside there. He did not move to Salem to live with his mother. His mother's move to her mobile home was delayed due to the COVID-19 pandemic. As of the September 28, 2020 hearing in this matter, claimant's mother had moved into her mobile home, and claimant was spending every other weekend with her while primarily residing in La Grande.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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) (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.

To establish good cause under OAR 471-030-0038(4), claimant must prove that he quit work because of a grave situation. While claimant and his family were understandably concerned about their mother's safety after she was repeatedly victimized by scammers, the fact that claimant did not move to Salem to aid his mother after quitting work, and by the time of the hearing visited her only every other weekend,

suggests that claimant's situation was not grave at the time he quit. It is more likely than not that if the situation had been grave claimant would have been prompted to move regardless whether the mobile home was ready, or to move from La Grande to Salem once his mother moved into her mobile home. Claimant did neither, continues to reside in La Grande, and visits Salem only every other weekend. Under those circumstances, the preponderance of the evidence fails to show that claimant's mother's situation was a grave situation for claimant.

Claimant also did not establish good cause to quit work due to compelling family reasons under OAR 471-030-0038(5)(g). "Compelling family reasons" exist under OAR 471-030-0038(1)(e)(B), in pertinent part, when "[t]he illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off." "[A] member of the individual's immediate family" includes parents. OAR 471-030-0038(1)(f). Although claimant and his family believed that his mother necessitated some care after being scammed and repeatedly contacted by the same scammers, the record fails to show that claimant's mother was experiencing "illness" or "disability" under OAR 471-030-0038(5)(g). Claimant also requested and received time off and some flexibility to travel to see his mother from the employer, suggesting that the employer did accommodate claimant's request or need for time off work. For those reasons, claimant did not have good cause to quit work due to "compelling family reasons."

Claimant voluntarily left work without good cause. Claimant is therefore disqualified from receiving benefits because of this work separation.

DECISION: Order No. 20-UI-154047 is affirmed.

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

DATE of Service: November 5, 2020

NOTE: 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.

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.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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 الإستئناف 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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.