

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0715

Reversed ~ Revocada
No Disqualification ~ No Descalificación

PROCEDURAL HISTORY: On August 20, 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 July 28, 2019 (decision # 71254). Claimant filed a timely request for hearing. On July 22, 2020, ALJ J. Williams conducted a hearing interpreted in Spanish at which the employer failed to appear. On September 30, 2020, the ALJ issued Order No. 20-UI-154632, affirming the Department's decision. On October 8, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 20 de agosto de 2020, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante dejó el trabajo sin buena causa y fue descalificado de recibir beneficios de desempleo a partir del 28 de julio de 2019 (decisión # 71254). El reclamante sometió una aplicación oportuna para una audiencia. El 22 de julio de 2020, el juez administrativo J. Williams llevó a cabo una audiencia que fue interpretada al español, y en la que el empleador no participó. El 30 de septiembre de 2020, el juez administrativo emitió la Orden No. 20-UI-154632, confirmando la decisión del Departamento. El 8 de octubre de 2020, el reclamante presentó una aplicación para revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

FINDINGS OF FACT: (1) Richardson Sports Inc. employed claimant in its blocking department from November 10, 2017 until August 2, 2019.

(2) Claimant knew that his authorization to work legally in the United States was going to expire on August 16, 2019. Claimant was unwilling to work without legal work authorization because engaging in unauthorized employment could damage his ability to obtain work authorization in the future, or could result in deportation.

(3) Before July 19, 2019, claimant asked the employer for "help" with his work permit, and the employer "ignored" claimant and "pushed [him] aside as if [he] was trash." Transcript at 9. Claimant did not tell his employer when his work authorization was going to expire.

(4) Claimant spoke with others who had experiences similar to his own immigration experience. They told him he should give his employer two weeks' notice to quit before his work authorization expired so he would avoid possible immigration problems and remain on good terms with the employer and improve the possibility that the employer would rehire him when he obtained work authorization again.

(5) On July 19, 2019, claimant gave the employer two weeks' notice that he planned to quit on August 2, 2019.

(6) On August 2, 2019, claimant quit work to avoid engaging in unauthorized employment and to avoid adverse consequences with U.S. Citizenship and Immigration Services (USCIS).

CONCLUSIONS AND REASONS: Claimant quit work 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.

The order under review concluded that claimant quit work without good cause because claimant did not face a situation of such gravity that he had no reasonable alternative but to quit work when he did, reasoning that claimant "did not share his work permit status with the employer and . . . therefore, did not know if the employer could assist him with his legal work status problem." Order No. 20-UI-154632 at 2. The record does not support this conclusion. The record shows that claimant quit work with good cause.

Claimant faced a grave situation due to the impending expiration of his work authorization and had no reasonable alternative to quitting work when he did. Continuing to work without work authorization was illegal and had claimant done so, he risked the ability to obtain work authorization in the future, and deportation. Order No. 20-UI-154632 asserted by implication that telling his employer that his work authorization was going to expire on August 16, 2019 was a reasonable alternative to quitting work. However, claimant asked his employer for help with his work permit, and the employer "ignored" him. There is no evidence to show that disclosing the date his work authorization would expire would have made any difference where the employer "ignored" claimant's request for help when claimant did not disclose the expiration date. Nor is there evidence to show that the employer could have done anything to assist claimant with his ability to obtain or extend his work authorization. Claimant gave two weeks' notice to quit before his work authorization ended, which was reasonable under the circumstances so that claimant would not face adverse immigration consequences and would remain on good terms with the employer and potentially return to that employer for work in the future or receive a good work recommendation.

For the foregoing reasons, claimant quit work for good cause and is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 20-UI-154632 is set aside, as outlined above. *La Orden de la Audiencia 20-UI-154632 se deja a un lado, de acuerdo a lo indicado arriba.*

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

DATE of Service: November 30, 2020

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.

NOTA: Esta decisión revoca una orden judicial que negó beneficios. Por favor tenga en cuenta que, si le deben beneficios, el Departamento puede tomar aproximadamente una semana para pagar esos beneficios.

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.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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