

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0769

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 28, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective December 8, 2019 (decision # 81029). Claimant filed a timely request for hearing. On November 13, 2020, ALJ Griffin conducted a hearing, and on November 17, 2020 issued Order No. 20-UI-156512, affirming decision # 81029.¹ On December 4, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Metro West Ambulance Service employed claimant as a non-emergency medical transport driver from July 2019 until December 13, 2019.

(2) After claimant concluded her initial on-the-job training, she worked by herself in a transport vehicle. Throughout a given shift, she would receive dispatches to pick up passengers, who were generally wheelchair-bound, and transport them to specified locations.

(3) Sometimes, and particularly during night shifts, claimant was required to drive to places in the Portland metropolitan area where she felt unsafe due to her concerns about crime. Further, she was sometimes assigned to drive people who claimant was concerned might be dangerous. On one such occasion, claimant picked up a “severely mentally ill” patient who was acting aggressively towards claimant and had a body lice infestation. Transcript at 10 to 11. On another occasion, claimant was required to transport a person who had just been arrested to the Washington County Jail; in that incident, the passenger sat unrestrained in the back of claimant’s van while a police escort trailed behind claimant. Transcript at 6 to 7.

(4) Claimant spoke with her supervisor about her safety concerns on more than one occasion. The

¹ Order No. 20-UI-156512 incorrectly stated that claimant was disqualified from receiving benefits beginning December 10, 2019. Order No. 20-UI-154062 at 3. This appears to be a clerical error. The Order affirmed the administrative decision and should therefore have stated that the disqualification date was December 8, 2019.

supervisor's responses were generally to tell claimant that work as a driver was challenging and that not everyone was suited to perform it. Occasionally, the supervisor offered claimant a tip about how to handle a difficult ride, such as calling the police about criminal activity or notifying dispatch and requesting to be reassigned (which claimant utilized once). Claimant felt that the supervisor's responses did not sufficiently address her concerns. Claimant also spoke with her coworkers about the supervisor's responses to those concerns, but felt that her coworkers did not seem concerned about the job's working conditions.

(5) During claimant's shifts, there was at least one supervisor on the employer's premises at all times. Claimant's supervisors reported to their own supervisors, who themselves reported to the president of the company. The employer's employee handbook provided that an employee with a concern about their employment should generally approach their supervisor first; and that if the employee was unsatisfied with the supervisor's response, they should attempt to elevate the concern to the next level of supervision until, if necessary, reaching the president. Claimant never addressed her concerns about working conditions to anyone other than her immediate supervisor and her coworkers.

(6) On December 8, 2019, claimant submitted a letter of resignation to the employer stating that her last day of work would be December 13, 2019. On December 13, 2019, claimant quit work because she continued to feel unsafe on the job.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Claimant has not met her burden to show that she had good cause to leave work when she did. Claimant testified about several incidents that she experienced during the several months she worked for the employer when she felt "unsafe."² Notably, however, claimant did not offer testimony to show that she was actually in appreciable danger during any of the incidents which made her uncomfortable during her course of employment. Instead, claimant testified that when she attempted to address her safety concerns with her supervisor, the supervisor told her that, ". . . well, that's the job and so this is just what we have to do."³

Out of context, such a statement might suggest that claimant's supervisor was indifferent to claimant's concerns. However, when read together with the evidence on the record, the supervisor's lack of concern here reflects that, while claimant may have subjectively felt unsafe on the job, she did not objectively

² Transcript at 6.

³ Transcript at 9.

face a risk of harm that was greater than to be expected for the occupation, or that could not be alleviated by contacting the police or requesting reassignment if claimant felt unsafe. Claimant has not therefore shown that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

For these reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective December 8, 2019.

DECISION: Order No. 20-UI-156512 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 11, 2021

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.

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.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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