

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0770

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause, disqualifying claimant from receiving benefits effective December 1, 2019 (decision # 55157). Claimant filed a timely request for hearing. On November 12, 2020, ALJ S. Lee conducted a hearing, and on November 19, 2020 issued Order No. 20-UI-156656, affirming the Department's decision. On December 7, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that they provided a copy of their 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 them 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).

FINDINGS OF FACT: (1) Avenue Residential LLC employed claimant as a maintenance worker from November 5, 2019 until December 4, 2019.

(2) While claimant worked for the employer, he and his supervisor regularly disagreed about how claimant should complete tasks to which the supervisor had assigned him. Claimant also regularly felt concerned that he was at risk of injuring himself on the job, and believed that some of the tasks the employer assigned to him violated Occupational Safety and Health Administration (OSHA) regulations. While claimant worked for the employer, he did not incur any work-related injuries.

(3) The employer had a human resources department and additional levels of management with whom claimant could have spoken about the above concerns. Prior to quitting, claimant did not speak to anyone about either of his concerns other than his supervisor and the office manager.

(4) On December 3, 2019, claimant and his supervisor had a “heated conversation,” which caused claimant to approach the office manager later that day and tell her that he could no longer work with the supervisor. Transcript at 10.

(5) On December 4, 2019, claimant did not show up for work. Later that day, as a result of his poor relationship with his supervisor and his concerns about safety, claimant called the office manager and informed her that he was quitting.

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 quit working for the employer, in part, because of the difficult working relationship he had with his supervisor. The parties offered differing accounts of the strained interactions between claimant and his supervisor. Claimant, for instance, suggested that the supervisor “. . . had a serious problem” with him, and described the supervisor during their final interaction as being “very angry.” Transcript at 6, 10. The supervisor, by contrast, testified that the conflicts arose from claimant’s frustration with the supervisor’s directions to complete work according to the employer’s procedures. Transcript at 20. Regardless of which version of events is more accurate, however, claimant has not met his burden to show that he had good cause to leave work when he did.

Claimant did not offer evidence to suggest that his interactions with the supervisor rose above mere unpleasantness. He did not, for instance, testify as to any negative effects that the ongoing conflicts had on his well-being, or otherwise explain why he was no longer able to continue working for the employer as a result. Further, while the record shows that claimant had the reasonable alternative of addressing the concern with the employer’s human resources department or other persons in supervisory positions, claimant explained that he did not do so only because he “didn’t want to cause any waves” with the employer because he was a new hire, and instead wished to just move on. Transcript at 8. Therefore, to the extent that claimant quit work due to his working relationship with his supervisor, claimant has not shown that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Claimant also quit working for the employer, in part, because of his concerns about the safety of the tasks to which his supervisor had assigned him. For instance, claimant testified at hearing that his supervisor had directed him to paint a stairwell while standing on a 2x6 board balanced atop a ladder. Transcript at 7. The supervisor testified, however, that painting the stairwell in that manner was claimant’s idea, which the supervisor rejected in favor of using an extension brush. Transcript at 19 to 20. Similarly, claimant testified that he had been assigned to move “large refrigerators” and other

appliances “probably 70, 80 yards” on hand dollies, which he felt was unsafe, rather than being permitted to move them using a truck. Transcript at 7, 14 to 15. The supervisor disputed claimant’s account, testifying that he would typically move large appliances himself rather than assign claimant to do so; that when claimant did move appliances, it was only with another person; and that the maintenance technician workers had actually been permitted to use the supervisor’s truck to move appliances. Transcript at 18. As neither party offered additional evidence to corroborate their testimony, the evidence as to whether claimant had been exposed to unsafe working conditions is equally balanced. Where the evidence is no more than equally balanced, the party with the burden of persuasion – here, claimant – has failed to satisfy his evidentiary burden. Therefore, to the extent that claimant quit due to safety concerns, he has not shown that the working conditions were unsafe, and has not shown that no reasonable and prudent person would have continued to work for their 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 1, 2019.

DECISION: Order No. 20-UI-156656 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 13, 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.

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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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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