

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0008

Modified
Disqualification

PROCEDURAL HISTORY: On November 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective February 23, 2020 (decision # 134316). Claimant filed a timely request for hearing. On December 15, 2020, ALJ Frank conducted a hearing, and on December 18, 2020 issued Order No. 20-UI-157874, concluding that claimant quit work without good cause, but modifying the date of disqualification to begin on March 1, 2020. On January 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Ugly Truth Bar & Grill Inc. employed claimant as a bartender, cook and server from June 2017 until April 20, 2020.

(2) In mid-February 2020, claimant was pregnant and spoke to the employer about taking a maternity leave of absence. The employer gave claimant leave of absence paperwork to complete, which directed claimant to indicate when she wished to begin her leave and when she expected to return to work. Claimant did not complete the paperwork or return it to the employer because she was unsure of when or if she would return to work due to other circumstances in her life.

(3) Claimant continued working for the employer until March 5, 2020, and then began her leave of absence. On March 31, 2020, claimant gave birth.

(4) On April 20, 2020, claimant contacted the employer via text message and expressed interest in returning to work. At that time, the employer asked claimant if she had obtained a medical release to return to work, and claimant told the employer that she had not been to see the doctor. Claimant did not provide a medical release or attempt to return to work at that time, and did not contact the employer about returning to work until October 2020. Exhibit 1.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

Nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The record does not show that either party ever explicitly severed the employment relationship. To the contrary, claimant testified at hearing that she did not believe she had quit the job. Audio Record at 28:12. Nevertheless, the record shows that claimant no longer works for the employer, and a determination of which party severed the employment relationship, and when that occurred, must be made. The order under review concluded that “[t]he preponderance of all evidence in the hearing record demonstrates that claimant was unwilling to remain employed as of March 5, 2020, insofar as she refused to fulfill the requirements of employment while off work,” and that claimant had therefore quit work on March 5, 2020. Order No. 20-UI-157874 at 3. The record supports the order’s conclusion that claimant quit work, but not that she did so on March 5, 2020.

Rather, the preponderance of the evidence demonstrates that while claimant was, at the time she took her leave, uncertain about returning to work, she was nevertheless willing to continue to work for the employer. That claimant requested a leave of absence rather than quitting outright, and that she contacted the employer about six weeks after she began her leave, indicated that claimant had planned to return to work if and when it was possible to do so. However, the record also shows that claimant could have continued to work for the employer¹ when she was cleared to return to work by a medical provider, and that claimant neither fulfilled the employer’s request to provide such documentation nor contacted the employer again for more than five months. Because claimant could have continued working for the employer for an additional period of time, but chose not to do so— by way of failing to provide a medical release or contacting the employer for more than five months— claimant voluntarily quit by abandoning her job. The record does not explicitly show when claimant made the decision not to obtain and provide a medical release, but the preponderance of the evidence shows that, more likely than not, she made that decision on April 20, 2020 when the employer requested it from her. Claimant therefore quit work on April 20, 2020.

Voluntary Quit. 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). “[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.

¹ The employer testified at hearing that because claimant had stated that she did not know if she would be able to return to work, the employer had considered claimant to no longer have been employed as of March 5, 2020. Audio Record at 26:18. However, because the employer also testified that they were willing to allow claimant to return to work with a medical release, and because the record does not show that the employer otherwise took steps to sever the employment relationship, the preponderance of the evidence indicates that the employer only meant that they had believed that claimant had quit—not that they were unwilling to allow claimant to continue working.

Claimant did not admit at the hearing that she had quit, and therefore gave no testimony which purported to explain why she quit. The preponderance of the evidence supports a reasonable inference that claimant did not return to work because she was unwilling to obtain and provide a medical release to return to work after contacting the employer. The record fails to show that exigent circumstances beyond claimant's reasonable control prevented her from doing so. Absent such a showing, claimant has not established that she abandoned the job due to a reason of such gravity that she had no alternative but to quit.

For these reasons, claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective April 19, 2020.

DECISION: Order No. 20-UI-157874 is modified, as outlined above.

S. Alba and D. P. Hettle.

DATE of Service: February 5, 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 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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