

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0081

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 27, 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 unemployment insurance benefits effective April 5, 2020 (decision # 131859). Claimant filed a timely request for hearing. On January 6, 2021, ALJ Schmidt conducted a hearing, and on January 14, 2021 issued Order No. 21-UI-159190, affirming decision # 131859. On February 2, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Powder House Inc. has employed claimant as a ski gear technician on a seasonal basis during the winter months beginning in 2013 and continuing in 2021.

(2) Every year, claimant leaves his seasonal work for the employer, typically in the latter part of April or in May, in order to work his summer job as a naturalist. Claimant typically returns to the employer mid-October of each year.

(3) On March 26, 2020, claimant notified the employer that he would be ending his season on April 9, 2020, earlier than usual. Claimant made this decision because he was anticipating a visit from his partner's immunocompromised father, realized that he needed to quarantine himself for the sake of the father's safety, and could not do so while working for the employer. On April 9, 2020, claimant completed his last day of work for the employer during the winter 2019-2020 season.

(4) In fall of 2020, claimant returned to work for the employer.

CONCLUSIONS AND REASONS: No work separation occurred, and claimant therefore is not disqualified from receiving benefits based on a work separation from the employer.

The order under review found as fact, without analysis, that claimant voluntarily quit work without good cause, based in part on a finding that claimant "gave the employer's owners notice that he would quit

work for the season on April 9, 2020.” Order No. 21-UI-159190 at 2. The record does not support this conclusion.

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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). With the exception of the provisions of ORS 657.221(2)(a),¹ the date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The material facts in this case are not in dispute. Since 2013, claimant and the employer have maintained a seasonal employment relationship in which claimant works for the employer through April or May, leaves for his summer job, and then returns to work during the next ski season around October. The outcome of the order under review is predicated on finding that claimant’s departure at the end of each season constitutes a severance of the employment relationship, followed by a rehiring at the beginning of the next ski season. The facts on the record lend some support to this stance, but overall, the record shows that a work separation did not occur each year at the end of the season.

For example, the employer testified at hearing that claimant “normally quits and then comes back.” Transcript at 15. Further, the employer submitted a copy of a letter claimant wrote to them, dated March 26, 2020, which the employer characterizes in their cover letter as a “letter of resignation.” Exhibit 2 at 1. However, the employer’s testimony and characterization of claimant’s letter is not dispositive. Claimant’s letter itself does not use the words “quit” or “resign,” instead stating, in relevant part:

My last day for the season as discussed will be April 9th as the guiding season will be starting to commence. I look forward to another season this coming winter where we can continue to build upon our combined successes.

Exhibit 2 at 2. Claimant’s letter did not suggest an intention to sever the employment relationship. Rather, the letter, when read in concert with claimant’s long-standing arrangement to work for the employer on a seasonal basis, and the fact that he continued that arrangement as planned once the 2020–2021 season began, shows that the employment relationship has been, more likely than not, continuously maintained since claimant began working for the employer in 2013. For that reason, no work separation took place, and claimant is therefore not disqualified from receiving benefits.

DECISION: Order No. 21-UI-159190 is set aside, as outlined above.

S. Alba and D. P. Hettle.

DATE of Service: March 10, 2021

¹ ORS 657.221 relates to ineligibility for benefits of certain educational institution employees and does not apply to this case.

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 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.

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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 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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