

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0096

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 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 May 17, 2020 (decision # 81839). Claimant filed a timely request for hearing. On January 14, 2021, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on January 21, 2021 issued Order No. 21-UI-159513, affirming decision # 81839. On February 10, 2021, Claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The employer, an auto parts retail chain, employed claimant as a commercial parts professional from June 2018 until May 22, 2020.

(2) In January 2020, the employer transferred claimant to a store on East Powell Road in Portland, Oregon. Claimant believed that he would receive a pay raise at the East Powell store, because prior to the transfer, claimant's district manager told claimant that he would "be taken care of" and would "get paid what [he] deserve[d]." Transcript at 17. Claimant did not receive a pay raise.

(3) In February 2020, the employer hired a new manager for the East Powell store. In late February 2020, claimant discovered that the store manager would sometimes adjust claimant's hours by assigning 30-minute unpaid lunch breaks to claimant's time card, which resulted in claimant not being paid for some time he worked. Claimant raised the time card discrepancies with the employer. In March 2020, the employer investigated the matter, corrected the discrepancies, ensured claimant was paid appropriately, and told the store manager not to repeat the conduct going forward.

(4) By April 2020, claimant had become dissatisfied with working at the East Powell store. During that timeframe, claimant noticed that the store manager was again sometimes assigning unpaid lunch breaks to his time card. Claimant raised the time card discrepancies with the employer, and the employer began an investigation.

(5) On May 8, 2020, claimant gave the employer a letter that cited the store manager's time card adjustments and the lack of a pay raise, along with other grievances, and stated that unless the employer transferred claimant back to his old store, claimant would quit effective May 22, 2020. The employer declined to grant claimant a transfer back to his old store.

(6) On May 14, 2020, claimant learned that the store manager at the East Powell store planned to resign. On May 15, 2020, claimant spoke to his district manager. The district manager asked claimant if claimant was willing to stay since the store manager was leaving. Claimant responded, "[W]ell, you know, I have to be compensated. I – I was promised a pay raise. I never got[.]" Transcript at 36. Claimant further stated, "[I]f [the store manager is] gone and you get us help, I'm more than willing to stay." Transcript at 36. The district manager informed claimant he would get back to him.

(7) On May 19, 2020, the employer suspended the store manager. On May 21, 2020, the employer terminated the store manager for "broken policy, referring to time card, and human resources issues[.]" Transcript at 39-40.

(8) On May 22, 2020, the district manager called claimant and advised that the employer had accepted claimant's resignation. Shortly thereafter, claimant received his final paycheck. In claimant's final paycheck, the employer corrected the adjustments the store manager had made to claimant's time card and paid claimant all his wages due.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 establishes that claimant's work separation was a voluntary leaving. In claimant's May 8, 2020 letter, claimant advised that he would quit working for the employer on May 22, 2020 unless he was transferred back to his old store. During claimant's May 15, 2020 conversation with the district manager, claimant conditioned his willingness to continue working for the employer on a pay raise and the employer providing more "help" for the East Powell store. Transcript at 36. Claimant could have continued working for the employer if he had not conditioned doing so on the employer meeting demands that it was unwilling to meet. The work separation therefore was a voluntary leaving, and not a discharge.

Voluntary Leaving. 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.

At hearing, claimant testified that his decision to quit effective May 22, 2020 was brought to “the boiling point” by the store manager assigning unpaid lunch breaks to his time card. Transcript at 12. Claimant also characterized the employer’s failure to give him a pay raise as the “last straw.” Transcript at 7. Claimant failed to meet his burden to show that these reasons were of such gravity that he had no reasonable alternative but to leave work when he did.

While the store manager’s conduct assigning unpaid lunch breaks to claimant’s time card was troubling, the record does not support that the time card discrepancies placed claimant in a grave situation. Claimant did not show the nature or extent of any hardship caused by the time card discrepancies, and the record does not show the frequency with which the store manager made the improper time adjustments.

Further, at the time claimant tendered his May 8, 2020 letter, the reasonable alternative of continuing to work while the employer took corrective action was available to claimant. As of late March or April 2020, the employer was investigating the store manager’s conduct relating to claimant’s time cards and, when claimant had raised the store manager’s time card practices previously in late February 2020, the employer had acted reasonably swiftly by March 2020 to ensure that claimant was paid appropriately and informed the store manager not to repeat the conduct. Given that the employer completed the first investigation into the store manager’s time card practices and took corrective action within a matter of weeks, the record does not support that claimant would have had to continue to work for an unreasonably lengthy or indefinite period of time while the second investigation was underway. *Compare J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by the Bureau of Labor and Industries).

Moreover, although the store manager’s conduct persisted after the employer told him in March 2020 not to repeat the conduct, the record shows that the alternative of continuing to work while the employer took corrective action would not have been futile and more likely than not would have resulted in the store manager’s termination and claimant being paid appropriately. On May 21, 2020, which was before claimant quit on May 22, 2020, the employer terminated the store manager for “broken policy, referring to time card, and human resources issues[.]” Transcript at 39-40. Also, in claimant’s final paycheck, the employer corrected the adjustments the store manager had made to claimant’s time card and ensured that claimant was paid all his wages due.

Claimant also did not have good cause to quit based on the employer’s failure to grant him a pay raise. Claimant did not establish that failing to receive a pay raise would cause a reasonable and prudent person in claimant’s situation to leave work. The record indicates that the employer never made claimant a firm guarantee of a pay raise, only that the employer’s district manager stated that claimant would “be taken care of” and would “get paid what [he] deserve[d].” Transcript at 17. While claimant may have felt misled by the employer’s failure to grant a pay raise, the record does not support that a reasonable and prudent person in claimant’s position would have rejected the option of earning some wages by continuing to work without a pay raise and instead opt to quit work and earn no wages at all.

Claimant failed to establish that, at the time he quit, no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

DECISION: Order No. 21-UI-159513 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 19, 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 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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.