

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0119

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 14, 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 benefits effective March 8, 2020 (decision # 103013). Claimant filed a timely request for hearing. On January 27, 2021, ALJ S. Lee conducted a hearing, and on February 1, 2021 issued Order No. 21-UI-160149, affirming decision # 103013. On February 19, 2021, claimant filed an application for review of Order No. 21-UI-160149 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) The Benson Hotel employed claimant, most recently as a sales coordinator, from December 2019 until March 12, 2020.

(2) While claimant worked for the employer, she was enrolled in a school that offered a dental hygiene program that involved both classroom study and clinical training. Claimant was not required by law to attend school.

(3) From 2016 through early September 2019, claimant worked for the employer while attending night school to complete the "pre-requirements" for the clinical training part of her program. Exhibit 1. When claimant's clinical training began in late September 2019, claimant left her position with the employer because she was required to complete a full-time rotation at a dental clinic, which conflicted with her work schedule at the employer.

(4) After her clinical rotation ended in December 2019, claimant returned to the employer in her previous position because the person they had hired to replace her had quit and claimant was able to

perform those duties without additional training. Claimant's winter term clinical training schedule allowed her to continue working for the employer until March 12, 2020 when, by agreement with the employer, she again left her position with the employer after she finished training her replacement. Claimant agreed to leave at that time because she was scheduled for another full-time clinical work rotation beginning on March 30, 2020, and ending during the summer of 2020, which conflicted with the hours she worked for the employer.

(5) When claimant left her position on March 12, 2020, she offered to remain available for the employer's sales team if needed, and spoke with the employer's sales manager about the possibility of returning later for projects or other work, provided it did not conflict with her clinical schedule. Based on their discussion, the employer's sales manager did not require claimant to return her employer property, which was not standard procedure for a work separation with the employer. However, the employer processed claimant's departure on March 12, 2020 as a resignation due to claimant's clinical work rotation scheduled to begin on March 30, 2020.

(6) Approximately a week after claimant left work on March 12, 2020, the employer laid off its entire sales staff, except for the sales manager, due to the COVID-19 pandemic. The clinic where claimant was scheduled to begin a clinical rotation on March 30, 2020 also closed due to the pandemic.

(7) Continuing work for the employer would have been available for claimant until the employer's sales staff lay-off on March 20, 2020, if she had not voluntarily left her position on March 12, 2020.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

At hearing, claimant asserted that when she left her position on March 12, 2020, her understanding was that her employment was "not considered severed or final but . . . paused" with an "informal leave." Audio Record at 19:20 to 20:30. However, the record fails to show that claimant and the employer reached such an agreement. At hearing, employer's human resources (HR) manager explained that the sales manager had sent an email stating the claimant's last day was March 12, 2020 and it did not mention any informal leave of absence or that her leaving was temporary. Audio Record at 31:30 to 32:30. The HR manager also explained that the employer did not offer employees leaves of absence other than under the Family and Medical Leave Act (FMLA), which claimant would not have qualified for, and the employer processed claimant's leaving on March 12, 2020 as a resignation due to her upcoming clinical work. Audio Record at 32:05 to 32:30; 34:00 to 34:45. The HR manager further asserted that continuing work would have been available to claimant until the sales staff layoff on March 20, 2020 if she had not left her position on March 12, 2020. Audio Record at 33:30 to 34:00. More likely than not, because claimant could have continued to work for the employer from March 12, 2020 until March 20, 2020 if she had not left to pursue her upcoming clinical rotation, the work separation was a voluntary leaving that occurred on March 12, 2020.

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.

Per OAR 471-030-0038(5)(b), leaving work without good cause includes:

* * *

(D) Leaving to attend school, unless required by law . . .

* * *

The preponderance of the evidence shows that claimant voluntarily quit her job with the employer on March 12, 2020 to complete a school dental hygiene program requirement, a clinical rotation that was scheduled to begin on March 30, 2020. She was not required by law to attend school. Although claimant asserted in her written argument that claimant’s clinical work requirement was not “school,” she admitted at hearing that her clinical experience was part of her dental hygiene program and was required for her to obtain a license in that profession. Audio Record at 17:00 to 18:15. ORS 657.010 (6)(c) defines “[e]ducational institution” as an institution “in which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.” Under that definition, claimant’s clinical experience requirement was part of a course of training for the recognized occupation of dental hygienist at the educational institution or “school” she attended to obtain it.

Accordingly, under OAR 471-030-0038(5)(b)(D), claimant quit work when she did without good cause and is disqualified from receiving regular unemployment insurance benefits effective March 8, 2020 and until she earns at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-160149 is affirmed.

S. Alba and D. P. Hettle

DATE of Service: March 25, 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.

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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