

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0193

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 28, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, and claimant was not disqualified from receiving unemployment insurance benefits on the basis of that work separation (decision # 130559). The employer filed a timely request for hearing. On February 23, 2021, ALJ Demarest conducted a hearing, and on February 24, 2021 issued Order No. 21-UI-161516, concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective July 26, 2020. On March 16, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Securitas Security Services USA Inc. employed claimant as a security guard from 2019 until July 27, 2020. The employer assigned its security guards to work as private security at client locations.

(2) Claimant lived in Roseburg, Oregon and last worked for the employer at the location of one of their clients, Roseburg Forest Products (RFP), a lumber mill in Roseburg, Oregon.

(3) RFP required claimant to wear personal protective equipment, including safety goggles, when he worked as a security guard at its lumber mill. Claimant was aware of the requirement, but often forgot to put his safety goggles back on after he took them off during work interruptions, such as personal breaks. On such occasions, an RFP employee had to remind claimant to put his safety goggles back on.

(4) On July 24, 2020, claimant removed his safety goggles during a break. When he left the break room after his break, he forgot to take his safety goggles with him. After an RFP employee reminded claimant to put his safety goggles on, he returned to the break room, retrieved his goggles, and put them back on.

(5) As a result of that incident, on July 27, 2020, an RFP manager complained to the employer about claimant's recurring failure to wear his safety goggles at all times. At RFP's request, the employer replaced claimant with another security guard to work at RFP's lumber mill. On that day, the employer

did not have any available work assignments in Roseburg, Oregon to offer claimant. However, the employer had an available, regular, assignment at a site in Eugene, Oregon, which it offered to claimant. Claimant refused the assignment and his employment ended.

(6) Claimant refused the Eugene assignment because the assignment site was located over 75 miles away from his residence and a one-way commute from claimant's residence to the site took over 1 hour 15 minutes.

CONCLUSIONS AND REASONS: Claimant quit work with 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

The Department concluded that the employer discharged claimant from work. However, claimant could have continued to work for the employer on and after July 27, 2020 by accepting the Eugene assignment the employer offered to him. Because claimant was not willing to accept the work assignment in Eugene, the work separation was a voluntary leaving that occurred on July 27, 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). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Order No. 21-UI-161516 concluded that claimant quit work without good cause, reasoning that although continuing to work would have required claimant to commute over 70 miles and over one hour each way, which was sufficiently grave that claimant had no reasonable alternative but to quit, the gravity of the situation was created by claimant's own deliberate actions in failing to take steps to ensure that he wore his safety goggles at RFP, which ended that assignment. Order No. 21-UI-161516 at 3.

The record supports the order's conclusion that the employer's offer of the Eugene assignment with its lengthy commute created a situation so grave that claimant had no reasonable alternative but to quit. Per OAR 471-030-0038(5)(b), leaving work without good cause includes leaving suitable work to seek other work. By logical extension of that principal, leaving work with good cause under OAR 471-030-0038(4) may leaving unsuitable work to seek other work. In determining whether any work is suitable, the factors to be considered include "the distance of the available work from the residence of the individual." ORS 657.190. Here, the record shows that the distance to the Eugene assignment from claimant's residence was over 75 miles and a one-way commute from claimant's residence and to the

site took over one hour and fifteen minutes. Viewed objectively, a regular commute of over 150 miles and two hours and thirty minutes per day to and from Eugene, Oregon made the work unsuitable under ORS 657.190, creating a situation so grave that claimant had no reasonable alternative but to quit.

However, the record does not support order's conclusion that claimant's own deliberate actions created the gravity of his situation. The record shows that claimant "forgot" to take his safety goggles with him when he left the breakroom on July 24, 2020, and not that he did so as the result of his own "deliberate" actions within the ordinary meaning of that term. Audio Record at 30:00 to 30:35. The *Merriam-Webster Dictionary* defines the adjective form of "deliberate" as "characterized by or resulting from careful and thorough consideration."¹ The record fails to show that claimant's failure to put his goggles on before leaving the break room resulted from careful and thorough consideration of whether or not to do so. Accordingly, the order's reliance on OAR 471-030-0038(5)(f) to reach its conclusion is not supported by the record.

Claimant quit working for the employer on July 27, 2020 with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of that work separation.

DECISION: Order No. 21-UI-161516 is set aside, as outlined above.

S. Alba and D. P. Hettle.

DATE of Service: April 21, 2021

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.

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.

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¹ <https://www.merriam-webster.com/dictionary/deliberate>



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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