

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0246

Affirmed
Request to Reopen Allowed
Disqualification

PROCEDURAL HISTORY: On July 9, 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 2, 2020 (decision # 133349). Claimant filed a timely request for hearing. On August 20, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 1, 2020 at 9:30 a.m. On September 1, 2020, claimant failed to appear at the hearing, and ALJ Williams issued Order No. 20-UI-153522, dismissing claimant's request for hearing based on her failure to appear. On September 20, 2020, claimant filed a timely request to reopen the hearing. On September 22, 2020, OAH served notice of a hearing scheduled for October 6, 2020 at 9:30 a.m. to consider claimant's request to reopen and, if allowed, the merits of decision # 133349. On October 6, 2020, ALJ Williams conducted a hearing, and on October 9, 2020 issued Order No. 20-UI-155074, granting claimant's request to reopen and affirming decision # 133349. On October 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB). On December 2, 2020, EAB issued EAB Decision 2020-EAB-0681, modifying Order No. 20-UI-155074 to conclude that claimant had good cause to reopen the September 1, 2020 hearing and remanding the matter for further development of the record to determine if claimant had good cause to quit work.

On January 14, 2021, OAH served notice of a hearing scheduled for January 27, 2021 at 2:30 p.m. On January 27, 2021, claimant failed to appear at the hearing, and on January 28, 2021 ALJ Amesbury issued Order No. 21-UI-159920, dismissing claimant's hearing request based on her failure to appear. On February 4, 2021, claimant filed a timely request to reopen the January 27, 2021 hearing. On February 25, 2021, OAH served notice of a hearing scheduled for March 15, 2021 to consider claimant's request to reopen and, if allowed, the merits of decision # 133349. On March 15, 2021, ALJ Amesbury conducted a hearing, and on March 17, 2021 issued Order No. 21-UI-162815, allowing claimant's request to reopen and modifying decision # 133349 to conclude that claimant quit work without good cause and was disqualified from receiving benefits effective February 9, 2020. On April 4, 2021, claimant filed a timely application for review of Order No. 21-UI-162815 with EAB.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to reopen the January 27, 2021 hearing is **adopted**. The remainder of this decision addresses whether claimant had good cause to quit work.

FINDINGS OF FACT: (1) Best Western Lincoln Sands Suites employed claimant as a part-time housekeeper from August 25, 2019 until February 10, 2020.

(2) Claimant typically commuted to work by walking, taking a bus, or finding a ride with a coworker. Claimant felt that the bus fare she was required to pay when she took the bus to work was “affordable.” March 15, 2021 Audio Record at 36:51. Claimant was not required to pay for parking or other commute-related expenses while she worked for the employer.

(3) When claimant was initially hired, the employer scheduled her for about 32 hours per week. In January 2020, claimant’s hours were reduced to an average of about 24 hours per week. After the employer reduced claimant’s hours, claimant was no longer able to afford to pay her living expenses. The employer generally scheduled claimant on a biweekly basis, but also scheduled claimant for “call-in” days on which claimant was required to call the employer an hour prior to the start of a shift to see if the employer had work available for her that day. Claimant felt that she could not take a second job due to the unpredictability of her schedule with the employer.

(4) On January 27, 2020, because of the reduction in hours and her desire to seek a better-paying job, claimant gave the employer notice that she intended to quit effective February 10, 2020. Claimant’s actual last day of work was February 8, 2020, as she was ill and unable to work on February 9, 2020 and February 10, 2020.

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

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. A claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e). Leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A).

Claimant quit work because the employer reduced her hours and she could no longer afford to pay her living expenses. Claimant testified that the nature of being on-call led her to want to “sever ties . . .” so that “when [she] applied for a job [she] would be available for a full 40-hour a week position and not have to worry about” giving a two-week notice with the employer before starting a new job. March 15,

2021 Audio Record at 35:30 to 35:55. However, claimant also testified that there was no reason why she could not continue to work for the employer while looking for full time work elsewhere, or offer other evidence that continuing to work for the employer would have substantially interfered with her ability to return to full time work. March 15, 2021 Audio Record at 37:30. Likewise, claimant characterized occasional bus fare—the only cost-of-working expense she identified—as “affordable,” and gave no indication that it exceeded the cost of working. Thus, to the extent that claimant quit because the employer reduced her hours, claimant quit without good cause. To the extent that claimant quit in order to seek other work, claimant did not show that the job she left was unsuitable,¹ and therefore also quit work without good cause under OAR 471-030-0038(5)(b)(A).

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving benefits effective February 9, 2020.

DECISION: Order No. 21-UI-162815 is affirmed.

S. Alba and D. Hettle;
Angela Steger-Bentz, not participating.

DATE of Service: May 10, 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.

¹ *See* ORS 657.190.



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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