

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0271

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 30, 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 May 31, 2020 (decision # 144052). Claimant filed a timely request for hearing. On March 31, 2021, ALJ Amesbury conducted a hearing, and on April 2, 2021 issued Order No. 21-UI-164078, affirming decision # 144052. On April 10, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: On April 21, 2021 and May 3, 2021, claimant filed written argument with EAB. Claimant did not declare that he provided a copy of his May 3, 2021 argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Both arguments also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's April 21, 2021 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Market of Choice Inc. employed claimant as a chef from April 30, 2019 until June 5, 2020.

(2) Prior to March 2020, claimant worked 40 hours per week at a rate of \$18 per hour, which was \$3,120 gross earnings per month.¹ In March 2020, the employer reduced claimant's hours to 32 hours per week, but increased his pay rate to \$20 per hour to include \$2 per hour "hazard pay" due to COVID-19. Audio Record at 26:31. Claimant earned \$2,733.33 gross per month with the hazard pay and reduced hours.²

¹ (40 x \$18) x 52 weeks, divided by 12.

² (32 x \$20) x 52 weeks, divided by 12.

(3) Before the reduction in claimant's hours, claimant was able to afford his monthly mortgage payment for his house in Ashland, Oregon, but "it was close" for claimant to be able to afford the mortgage payment. Audio Record at 13:46.

(4) The employer had additional work hours available in departments other than the kitchen where claimant worked. Claimant was aware that the employer gave other employees additional work hours in different departments than where they were originally assigned, but claimant did not ask the employer about work in other departments because he was hired as a chef to work in the kitchen.

(5) Due to the reduction in his income and concerns about the impact of COVID-19 on the economy, claimant decided to sell his Ashland house and move to Puyallup, Washington where he and his family could live "for free" with his parents until he found an area he considered more affordable to live. Audio Record at 17:13 to 17:25. Claimant's family included his girlfriend. Claimant did not look for a rental home within commuting distance of his work. Claimant could have remained within commuting distance of his work for the employer, but preferred to leave the Ashland area to find a more affordable area to live.

(6) In May 2020, claimant put his house up for sale. Later in May 2020, claimant had a buyer for his house, and believed the sale would close in early June 2020.

(7) On May 22, 2020, claimant gave the employer notice that he would quit work on June 5, 2020.

(8) On June 5, 2020, claimant quit work to move to Puyallup to live rent-free with his parents until he was able to find a rental home there. The first sale of his house in June 2020 "fell through," and claimant remarketed the house, which sold in July 2020. Audio Record at 14:53. In July 2020, claimant moved to live with his parents in Puyallup.

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).

Claimant quit work because the employer reduced his hours. The record does not show that claimant left work with good cause due to a reduction in hours according to the criteria provided in OAR 471-030-0038(5)(e). The record under review does not show that continuing to work for the employer would

have substantially interfered with claimant's return to full time work. Nor does the record show that the cost of continuing to work for the employer would have exceeded the amount of remuneration claimant received from working. Pursuant to OAR 471-030-0038(5)(e), claimant did not have good cause to leave work when he did due to a reduction in hours.

To the extent claimant left work because the reduction in his hours rendered him unable to pay his mortgage, the record does not show that claimant left work with good cause. Although claimant preferred to live rent-free with his parents in Washington while he found a more affordable home, the record does not show that the monthly loss of \$387 gross income created a situation of such gravity for claimant that he had no reasonable alternative but to leave work. Claimant asserted in his written argument that he "did look into cheaper places to live." Claimant's April 21, 2021 Written Argument. However, that assertion contradicts claimant's sworn testimony at hearing. Claimant testified that he "assumed" that if he had decided to stay in Ashland he could have found a rental that he could afford with his reduced income, but that he "never looked" for a rental because he intended to move to Washington where he could live for free while he "explored" other areas to live. Audio Record at 18:30 to 18:56. The record therefore shows that looking for affordable housing within commuting distance of his employment was a reasonable alternative to quitting work on June 5, 2020.

The record also shows by a preponderance of evidence that, rather than quitting work when he did, claimant had the reasonable alternative of requesting additional hours of work in other departments to increase his income. The record shows that there was other work available outside of the kitchen and that it would not have been futile for claimant to request such work. Although the record does not show that claimant was specifically offered such other work, claimant was aware that there were additional work hours available in other departments, but did not ask the employer about that work because he was hired as a chef, and presumably preferred to work only as a chef. The additional hours could have enabled claimant to afford his mortgage payment in Ashland, or make more housing options affordable for claimant.

For these reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective May 31, 2020.

DECISION: Order No. 21-UI-164078 is affirmed.

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

DATE of Service: May 18, 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 desisyon.

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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www.Oregon.gov/Employ/eab

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