

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0275

Modified
Disqualification Effective Week 17-20

PROCEDURAL HISTORY: On December 10, 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 April 12, 2020 (decision # 73610). Claimant filed a timely request for hearing. On March 10, 2021, ALJ Moskowitz conducted a hearing, and on March 18, 2021 issued Order No. 21-UI-162910, affirming decision # 73610. On April 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: The ALJ admitted Exhibit 1 into evidence, but failed to mark Exhibit 1. As a clerical matter, EAB has identified the exhibit based on the ALJ's description of it and marked it as Exhibit 1. Audio Record at 12:20 to 13:15.

WRITTEN ARGUMENT: On April 8, 2021 and May 2, 2021, claimant submitted written argument in support of his application for review. EAB did not consider claimant's April 8, 2021 argument when reaching this decision because claimant did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's May 2, 2021 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 him 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 May 2, 2021 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) McMenamins employed claimant as a line cook for their restaurant in Salem, Oregon from April 30, 2014 until April 19, 2020.

(2) Claimant's son was born on September 27, 2017 and experienced medical complications following delivery that caused him respiratory distress, required several days of hospitalization, and placed him at

higher risk for future respiratory disease. Claimant's son did not receive further medical treatment or attention for respiratory disease following his discharge from the hospital.

(3) Beginning on March 17, 2020, the employer temporarily ceased operations due to the COVID-19 pandemic and temporarily laid claimant off work for that reason.

(4) On April 18, 2020, claimant's manager asked claimant to return to work. At that time, claimant was concerned that if he returned to work he could contract COVID-19 and could transmit it to his son, who claimant believed was susceptible to contracting COVID-19 because of his medical history. Claimant was also concerned about exposing his own mother to COVID-19, because she was both a caregiver for his son and at heightened risk due to her age. Claimant did not know what precautions the employer had taken to protect him and others from COVID-19 exposure in the workplace, and because the disease was so new, claimant was concerned that whatever precautions were in place would be insufficient to protect him and his family. For these reasons, claimant decided that he was not comfortable returning to work.

(5) On April 19, 2020, claimant contacted his manager and, without informing her that he was concerned about workplace precautions during the pandemic or asking her what precautions the employer had in place, told her that he was neither comfortable nor willing to return to work at that time. The manager informed claimant that if he did not return to work at that time, the employer could not guarantee that a line cook position would be available when claimant was willing to return to work. Claimant told his manager that he was quitting work "to work for his dad." Audio Record at 35:45 to 36:05.

(6) The employer had enacted policies to keep workers safe during the pandemic and would have considered additional safety measures had claimant requested them. The employer had accommodated health and safety requests made by other employees.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause. Order No. 21-UI-162910 is modified to correct the effective date of disqualification.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes the following:

* * *

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;

* * *

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine;

* * *

(g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Claimant voluntarily quit work due to concerns that he would contract COVID-19 at work and subsequently pass it to his son, who he believed was more susceptible to COVID-19 due to his medical condition at birth in 2017, and his mother, who was elderly. The record fails to show that any health care provider advised claimant to self-quarantine due to possible risk of exposure to, or spread of, COVID-19 to his son or mother. Similarly, the record fails to show that claimant was unable to work because he was required to stay at home to care for his son or other person with whom he lived or for whom he provided care who was suffering from COVID-19 or subject to a mandatory quarantine. The record also fails to show that he quit because the employer asked him to work in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of COVID-19. Therefore, subparagraphs (c), (e), and (g) of the OED Temporary COVID-19 Rule do not apply to this matter, and claimant did not quit for a "COVID-19 related situation" as defined by that rule.

Claimant also has not established that he left work with good cause under the general provision of OAR 471-030-0038(4). Claimant's concerns about potentially contracting COVID-19 at work and then spreading it to his son and mother were certainly reasonable. However, claimant failed to meet his burden to show that he faced a grave situation which left him with no reasonable alternative but to quit when he did. Claimant had the reasonable alternative of explaining his safety concerns to his manager, asking about the precautions the employer had in place to protect him and other workers, and requesting additional safety precautions if he felt some were lacking. The record reflects that exploring those alternatives would not have been futile, and more likely than not would have addressed claimant's concerns about the risk of contracting COVID-19 while at work. Because claimant's circumstances were not so grave that he had no reasonable alternative to quitting when he did, he left work without good cause.

Order No. 21-UI-162910 concluded that claimant quit work on April 18, 2020, which was during week 16-20, and was therefore disqualified from receiving benefits effective the beginning of week 16-20, or on April 12, 2020. Order No. 21-UI-162910 at 1. However, claimant testified that he informed his manager on April 19, 2020 that he would not be returning to work and the employer's manager testified

that claimant quit on April 20, 2020, both of which dates occurred during week 17-20. Audio Record at 20:15 to 20:55. 34:30 to 35:00. For that reason, although the record supports the conclusion that claimant quit work without good cause, it shows that he quit work on April 19, 2020, and for that reason, claimant's disqualification from benefits is effective the beginning of week 17-20, on April 19, 2020.

DECISION: Order No. 21-UI-162910 is modified, as outlined above.

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

DATE of Service: May 17, 2021

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.

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.

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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