

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0294

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 26, 2021, 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 August 23, 2020 (decision # 72006). Claimant filed a timely request for hearing. On March 29, 2021, ALJ Murdock conducted a hearing, and on April 6, 2021 issued Order No. 21-UI-164251, affirming decision # 72006. On April 16, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Waterford Grand employed claimant as a line cook in the kitchen of their residential care facility from August 1, 2020 until August 23, 2020.

(2) Claimant was concerned about the risk of exposure to COVID-19 at the employer's facility and spreading it to his wife, who had asthma and was at higher risk for complications.

(3) On or about August 8, 2020, a resident at the employer's facility tested positive for COVID-19. On August 8, 2020, claimant mentioned the resident's test result to the sous chef on claimant's line. The sous chef informed claimant that an employee had also contracted COVID-19 and been sent home. Although claimant thought the information he received from the sous chef might be unreliable, claimant was concerned that both a resident and possibly an employee had contracted COVID-19 at the employer's facility. Following the end of his shift on August 8, 2020, claimant discussed the matter with his wife and decided to quit working for the employer because he "didn't want to risk bringing home COVID to [his] wife." Audio Record at 7:45.

(4) On August 9, 2020, claimant tendered a two-week notice of his intent to quit on August 23, 2020, and mentioned to his supervisor his concerns about exposure to COVID-19 at the employer's facility. The supervisor told claimant that he believed the employer's safety precautions were adequate to prevent claimant from contracting COVID-19 at work.

(5) During the period of claimant's employment, the employer had safety precautions in place to minimize the risk of spreading COVID-19 among residents and employees. The employer required all employees to wear face coverings; kitchen workers like claimant were required to wear goggles or a face shield. The employer's kitchen had air ducts with filters and used a ventilation system that was separate from the rest of the facility. The kitchen was located on a different floor from where residents lived. The doors to the wings where residents lived were closed, locked, and not accessible to employees. The employer had a separate unit available to isolate residents who tested positive for COVID-19. The resident who tested positive for COVID-19 on or about August 8, 2020 was placed in this separate unit.

(6) Claimant worked through his notice period and voluntarily left work on August 23, 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.

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[.]

Claimant did not establish that he quit for a "COVID-19 related situation," as that term is defined by the temporary administrative rules. Claimant did not quit because a health care provider advised him to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus. Nor did claimant quit because he was unable to work due to having to stay home to care for family members who were suffering from a COVID-19 infection or were subject to a quarantine. While claimant testified

that his wife was at higher risk for complications from COVID-19 due to having asthma, the record does not show that at the time he quit, claimant was unable to work because he had to care for his wife, or that his wife was suffering from the novel coronavirus or was subject to a mandatory quarantine.

Claimant also failed to establish good cause to quit work under OAR 471-030-0038(4). Claimant left work because he was concerned that continuing to work at the employer's facility would risk exposing himself and his wife to COVID-19 because a resident and possibly an employee had contracted COVID-19 there. Claimant did not show that these reasons for quitting presented him with a situation so grave that he had no reasonable alternative but to leave work. The preponderance of the evidence supports that the employer had significant COVID-19 safety precautions in place, which included face covering requirements, and filtered air ducts and a ventilation system in the kitchen that was separate from the rest of the facility.

Claimant did not establish that the information he gained relating to an employee contracting COVID-19 was anything more than an unsubstantiated rumor. At hearing, the employer denied having any employees contract COVID-19 and claimant acknowledged that the information he received from the sous chef on that point "was a big coin flip" and may have been "false information, like people water cooler talking." Audio Record at 16:25, 30:23.

While the record does show that a resident had contracted COVID-19 around the time claimant decided to quit, that fact alone did not present claimant with a grave situation. More likely than not, claimant's risk of exposure to the resident who contracted COVID-19 was insignificant because the resident was cared for in an isolated unit away from the other residents and the kitchen where claimant worked. Moreover, the record shows that the risk to claimant of contracting COVID-19 from residents generally was low because the kitchen where claimant worked was located on a different floor from where residents lived, and the doors to the wings where residents lived were closed, locked, and not accessible to claimant.

Claimant quit work without good cause and is disqualified from receiving benefits effective August 23, 2020.

DECISION: Order No. 21-UI-164251 is affirmed.

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

DATE of Service: May 21, 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.surveymzmo.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 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 الإستئناف 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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