

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0339

Reversed & Remanded

PROCEDURAL HISTORY: On January 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 11, 2020 (decision # 133520). Claimant filed a timely request for hearing.¹ On April 8, 2021, ALJ Murdock conducted a hearing, and on April 12, 2021 issued Order No. 21-UI-164635, modifying² decision # 133520 to conclude that claimant voluntarily quit work without good cause, and was disqualified from receiving benefits effective October 4, 2020. On April 26, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare 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). The argument 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).

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct

¹ The record shows that claimant filed a timely request for hearing on January 12, 2021. However, due to a processing error, the request was not forwarded to the Office of Administrative Hearings (OAH) until March 19, 2021. Prior to that date, claimant filed a second request for hearing, which was late. ALJ Kangas considered claimant's late request, and on March 9, 2021 issued Order No. 21-UI-162341, dismissing the request as late without a showing of good cause. This matter is before EAB based on the April 12, 2021 hearing and Order No. 21-UI-164635.

² The order under review concluded that it affirmed decision # 133520. Order No. 21-UI-164635 at 3. However, because the order under review found a different date of disqualification than decision # 133520, the order actually modified, rather than affirmed, the administrative decision.

the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) ITS Logistics LLC employed claimant as a team driver from January 9, 2018 until October 7, 2020.

(2) Around late September 2020, claimant was assigned a new team driver with whom he was partnered to drive trucking routes. Driving duties were assigned such that while one of the two was driving, the other would rest or sleep in the truck's sleeping berth. In the approximately two weeks during which they worked together, claimant experienced difficulties with his new partner. In particular, the partner's driving habits, such as unnecessarily frequent stops, interrupted claimant's sleep and caused him to suffer from sleep deprivation. Claimant did not attempt to use a noise-cancelling device, such as headphones, to block out the external sound which kept him from sleeping. The partner was also responsible for an accident which totaled the truck while claimant was attempting to sleep in the sleeping berth, and claimant generally found the partner's work performance to be unsatisfactory.

(3) On October 7, 2020, claimant finished driving a 14.5-hour shift and was scheduled to drive the return trip about two hours later. Recognizing that it would be unsafe to drive after having only two hours of sleep, claimant contacted the fleet department's director of operations and informed him that he would be unable to drive the route. The director told claimant that if he did not drive the route as scheduled, the employer "would consider it job abandonment and [claimant] would be separated from the company if he did so." Transcript at 19. As a result of this conversation and claimant's concern that he would be unable to safely drive his shift that day, claimant voluntarily quit.

(4) On or around October 14, 2020, claimant contacted the employer and requested to be rehired on the condition that the employer discharge claimant's driving partner. The employer rehired claimant with the understanding that claimant would need to drive with the partner for one week until the employer could find a different person for claimant to drive with.

(5) On October 16, 2020, claimant told the employer that he could not continue working with his partner and did not return to work thereafter.

CONCLUSIONS AND REASONS: Order No. 21-UI-164635 is reversed and the matter remanded for further development of the record.

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.

The order under review concluded that claimant voluntarily quit work without good cause on October 7, 2020 because, although claimant was “placed in unsafe driving conditions when driving with a new driver,” he did not pursue reasonable alternatives to quitting because he “had not informed the employer of any unsafe driving conditions” and did not use the “noise canceling tools” available to him. Order No. 21-UI-164635 at 1–2. The record does not support these conclusions.

The record shows that claimant may have separated from the employer on two different occasions in October 2020: first on October 7, 2020, and again on October 16, 2020. The underlying administrative decision determined that claimant had voluntarily quit work on October 16, 2020. However, the order under review concluded that claimant quit work on October 7, 2020, and drew no distinction between what are potentially two separate periods of employment and, therefore, two potentially-disqualifying events. The hearing record does not show that the Department issued administrative decisions relating to both events, that the ALJ accepted jurisdiction over the issues related to both events, or that the parties waived their rights at hearing to notice of the ALJ accepting jurisdiction over any additional issues that were not contained in the notice of hearing.³ For that reason, on remand, the analysis should be confined to issues over which the ALJ has jurisdiction, and for which the parties have been given proper notice.

Because decision # 133520 addressed the event which occurred on October 16, 2020, the analysis here is confined to that event. First, while both parties testified that claimant “quit” on both October 7, 2020 and October 16, 2020, the record does not show that claimant ever returned to work for the employer after October 7, 2020. Transcript at 17, 20. This is relevant because in order for claimant to have quit working for the employer on October 16, 2020, he must first have re-established an employment relationship with the employer.⁴ If claimant did not perform services for the employer after the employer agreed to rehire him, claimant was not employed by them for another period of time, and there was no employment relationship that claimant could have severed on October 16, 2020. On remand, the record should be developed to show whether or not claimant returned to work for the employer after he quit on October 7, 2020.

To the extent that claimant did return to work for the employer after October 7, 2020, further inquiry is needed to determine whether the reason claimant voluntarily quit on October 16, 2020 was for good cause. While the record does generally show that claimant decided not to continue working for the employer past that date because of safety concerns related to working with his partner, the record should be developed to show specifically why claimant decided on that day that he would not work for the employer, including any incidents which directly preceded it. To the extent that claimant quit on October 16, 2020 due to concerns about his safety, inquiry should be made regarding the specific concerns he had, what acts, omissions, or other circumstances caused those concerns, and what reasonable alternatives to leaving work that claimant sought, or that were otherwise available to him, on or prior to October 16, 2020.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case.

³ See OAR 471-040-0025(8).

⁴ ORS 657.030(1) defines “employment” as “service for an employer, including service in interstate commerce, within or outside the United States, performed for remuneration or under any contract of hire, written or oral, express or implied.”

ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit with good cause, Order No. 21-UI-164635 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-164635 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 3, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164635 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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