

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0360

Reversed & Remanded

PROCEDURAL HISTORY: On March 19, 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 July 12, 2019 (decision # 134239). Claimant filed a timely request for hearing. On April 19, 2021, ALJ Snyder conducted a hearing, and on April 21, 2021 issued Order No. 21-UI-165294, modifying decision # 134239 and concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 23, 2020. On May 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lone Tree Farm employed claimant as a laborer and maintenance worker from November 6, 2019 until some time in 2020. Claimant also resided in a rental on property owned by the employer.

(2) Claimant did not have a set work schedule, and would either report to work to see what was needed on a particular day, or else would wait until the employer contacted him to assign him work somewhere on the property. Claimant sometimes did not hear from the employer for up to three days at a time.

(3) On February 29, 2020, the employer directed claimant to work on removing a patch of briar on the property. Claimant worked at the task for about four hours, and then sent the employer a text message which read, "I left. I'm going to get drunk." Audio Record at 9:02. Claimant did not perform any additional work for the employer after February 29, 2020. The employer eventually replaced claimant with another worker.

(4) On July 4, 2020, the employer notified claimant that they were selling the property on which he resided, and that he was required to vacate his rental housing.

CONCLUSIONS AND REASONS: Order No. 21-UI-165294 is set aside and this matter remanded for further development of the record.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The order under review concluded that because claimant “never again contacted the employer or reported to work” after February 29, 2020 but “could have continued to report to work after February 29, 2020 but chose not to,” claimant voluntarily quit work and was not discharged. Order No. 21-UI-165294 at 2. The record does not support this conclusion. At hearing, the employer testified that they understood claimant’s text message on February 29, 2020 to mean that he was quitting because “he never showed back up.” Audio Record at 10:14. Conversely, claimant testified that he “was not quitting,” but that after about four hours of difficult work on a hot day, he decided to leave and “get some beer,” and that he did not return to work after that date because the employer did not contact him again until they served him with the notice to vacate on July 4, 2020. Audio Record at 13:55 to 15:13.

Based on this information, it is not possible to discern either when the work separation occurred or whether it was a voluntary quit or a discharge. Given the unstructured nature of claimant’s work schedule with the employer, it is, for instance, possible that claimant remained willing to work for an additional period of time after February 29, 2020, but did not do so because he was waiting on instructions from the employer. The record also does not show when the employer hired another employee to replace claimant. If claimant remained willing to continue working for the employer through the date on which the employer hired his replacement—at which point continuing work was no longer available to claimant—the employer may have discharged him. On remand, the record should be developed to determine the points, if any, at which claimant was no longer willing to work for the employer or at which the employer was no longer willing to employ claimant. Depending on the results of that inquiry, the record should also be developed to show whether or not claimant was discharged for misconduct, or whether or not he voluntarily quit with good cause. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

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. 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 or whether the employer discharged him, Order No. 21-UI-165294 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-165294 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 10, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-165294 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 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

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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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