

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0371

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 3, 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 March 8, 2020 (decision # 65815). Claimant filed a timely request for hearing. On April 21, 2021, ALJ Micheletti conducted a hearing, and on April 29, 2021 issued Order No. 21-UI-165832, affirming decision # 65815. On May 11, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) T & T Marketing LLC employed claimant doing computer work as a digital content specialist from March 2019 until March 13, 2020.

(2) Prior to September 22, 2019, claimant work part time for the employer. On September 22, 2019, claimant suffered a concussion in a car accident. Claimant took three days off work due to the concussion. When claimant returned to work, her doctor recommended that claimant work "an hour on, an hour off, or a few hours on, a few hours off." Transcript at 6. The employer accommodated this work schedule, and claimant worked 20 to 30 hours per week.

(3) As of February 2020, claimant still had symptoms from the car accident including vertigo, neck pain, and migraines that would last sometimes for as long as a week. Claimant experienced "a lot of pain and a lot of stress" trying to complete 30 hours of work per week. Transcript at 7. On February 25, 2020, claimant met with her health care provider, who determined that claimant "had shown considerable improvements but still suffered headaches with more than 5 hours of computer work." Exhibit 1 at 32.

(4) The employer continued to accommodate claimant's need to work reduced hours. There was another employee in claimant's department who was able to "pick up the slack" if claimant had to miss work.

Transcript at 18. The employer also accommodated claimant's need for a flexible schedule. There were occasions when claimant would work for "a couple hours," go home for a few hours, and return to work when she was able to do so. Transcript at 17.

(5) On February 28, 2020, claimant gave the employer notice that she planned to quit on March 13, 2020. Although the employer was accommodating claimant's need to work reduced hours, claimant continued to find her work requirements stressful, especially if she missed work unexpectedly due to migraines. During the first week of March 2020, claimant experienced a week-long migraine induced by stress. The employer did not discipline or warn claimant for having to take a week off work due to the migraine. Claimant did not qualify for family medical leave.

(6) On March 13, 2020, claimant quit work as planned to do freelance contract web design work, which she had done in the past. Doing freelance work, claimant expected to do no more than 15 hours of computer work per week and could control her own work schedule if she experienced migraines. Claimant also planned to do temporary "event work" that was primarily physical labor that claimant expected would not trigger migraines. Transcript at 13. Claimant expected to work 40 to 64 hours per week doing the event work for four weeks.

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). Claimant had vertigo, neck pain, and chronic migraines, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit work in part because she preferred to pursue freelance work that required no more than 15 hours of computer work per week. To the extent claimant quit work to pursue freelance work, she did not have good cause to quit when she did. Per OAR 471-030-0038(5)(b)(G), leaving work without good cause includes leaving work for self employment. However, claimant's reason for leaving work was mixed; claimant wanted to pursue self employment, but also wanted to have work that allowed her to work few enough computer hours to avoid migraines, and to flex her work schedule or miss work when she experienced migraines. The record does not show that claimant faced a situation of such gravity that she had no reasonable alternative but to quit work when she did.

Since claimant was injured in February 2020, she had been working a reduced schedule that varied between no hours, when she experienced migraines, and 30 hours per week. The employer had accommodated claimant's fluctuating schedule, even allowing claimant to come and go from work during the workday. The preponderance of the evidence in the record shows that the employer would have continued to accommodate claimant's reduced hours, and had allowed claimant to work as few as

25 hours in the past, so was more likely than not willing to allow claimant to follow her medical provider's recommendation to work no more than five hours doing computer work per day. Although claimant preferred to work 15 hours per week doing freelance computer work, the record does not show that working a reduced schedule for the employer of no more than 25 hours per week was not a reasonable alternative for claimant, or that it was futile for claimant to request that schedule. The record also shows that the employer allowed claimant to take time off work when she experienced migraines, and that the employer was likely to continue to do so because there was another staff person who could "pick up the slack" if claimant had to miss work due to illness. The employer had not disciplined or warned claimant for missing work.

For these reasons, the record shows that claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 8, 2020.

DECISION: Order No. 21-UI-165832 is affirmed.

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

DATE of Service: June 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 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

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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.