

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0386

Modified
Disqualification Effective June 21, 2020 (Week 26-20)

PROCEDURAL HISTORY: On November 19, 2020, 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 June 21, 2020 (decision # 81624). Claimant filed a timely request for hearing. On April 22, 2021, ALJ Hoppe conducted a hearing, and on April 30, 2021 issued Order No. 21-UI-165957, modifying decision # 81624 by concluding that claimant quit work without good cause but was disqualified from receiving benefits effective June 14, 2020. On May 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The parties each submitted written argument. Both parties' arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond their reasonable control prevented them 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.

FINDINGS OF FACT: (1) Rogers Repair Service LLC employed claimant as a diesel mechanic until June 22, 2020. Claimant worked for the employer on the day shift.

(2) On or about June 11, 2020, one of the employer's night shift workers tested positive for COVID-19. The employer had two other workers on the night shift and alerted those workers of their potential exposure. Neither of those workers had symptoms. The employer decided to wait ten days to test those two workers because the employer understood from discussions with the county health department that they were required to wait ten days before testing them.

(3) During his shift on June 15, 2020, claimant learned that the night shift worker had tested positive for COVID-19 and that the other two night shift workers had not yet been tested. The news concerned claimant because he thought that if the untested night shift workers continued working, he might become infected by using the same work space during the day that they used at night. Claimant was concerned

about the potential of spreading COVID-19 to his parents, who were elderly and suffered from serious health conditions.

(4) On June 16, 2020, claimant was scheduled to work. Upon arriving for his shift that morning, claimant learned that the two untested night shift workers had worked the previous night. Claimant decided the risk of exposure to COVID-19 was too great to work his shift. Claimant informed his manager that he had to leave because of the risk of exposing his parents to COVID-19, and the manager allowed claimant to take a week off from work.

(5) Claimant thought it was dangerous for the employer to allow the two untested night shift workers to work without confirming whether they had COVID-19 and believed that by allowing them to work, the employer was failing to follow “state guidelines.” Transcript at 6. Claimant thought state guidelines should have required the employer to prevent the untested night shift workers from working until it was confirmed whether they had been infected with COVID-19.

(6) On June 21, 2020, claimant texted his manager and asked if it was safe for him to return to work the next day. On the morning of June 22, 2020, the manager advised claimant via text message that the two night shift workers had been tested for COVID-19, and that the results were negative.

(7) After receiving the manager’s text, claimant decided to quit because he “did not feel that [he] could trust that [the] [e]mployer was looking out for the interest of [his] health, and in turn [his] parents’ health[.]” Transcript at 7. On June 22, 2020, claimant called the employer and informed them that he was voluntarily leaving work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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.

Claimant left work because he “did not feel that [he] could trust that [the] [e]mployer was looking out for the interest of [his] health, and in turn [his] parents’ health[.]” Transcript at 7. However, claimant failed to establish that he quit work with good cause.

Claimant did not show that he faced a grave situation based on his belief that he could not trust the employer to value his health and that of his parents. Claimant was concerned that the employer did not sufficiently value his health because the employer allowed the untested night shift workers to work at the same shop as him (albeit in different shifts), which might have caused claimant to become infected with COVID-19 and, in turn, spread the virus to his elderly parents. However, the record shows that the employer allowed claimant a week off from work due to his concerns regarding the night shift workers

continuing to work and the risks that presented to his parents. Moreover, at the time claimant quit, working at the employer's shop did not pose an unreasonable risk of claimant being exposed to COVID-19 because by that point the night shift workers had tested negative for the virus. Further, while claimant asserted that the employer failed to follow state guidelines by allowing the untested night shift workers to work, he did not offer any evidence to support that assertion, which the employer denied. Claimant failed to establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but quit based on the reasons claimant identified, and that no such person would have continued working for the employer for an additional period of time.

For the above reasons, claimant failed to establish that he quit work with good cause on June 22, 2020. Because claimant quit work on June 22, 2020, Order No. 21-UI-165957 is modified because claimant's disqualification from benefits is effective June 21, 2020, and not June 14, 2021.

DECISION: Order No. 21-UI-165957 is affirmed.

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

DATE of Service: June 24, 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 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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www.Oregon.gov/Employ/eab

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