

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0387

Modified
Disqualification Effective Week 41-20

PROCEDURAL HISTORY: On March 8, 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 # 121553). Claimant filed a timely request for hearing. On April 20, 2021, ALJ Monroe conducted a hearing which was continued on April 23, 2021, and on April 30, 2021 issued Order No. 21-UI-165987, affirming decision # 121553. On May 17, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her 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) Fred Meyer Stores Inc. employed claimant as a grocery store worker from April 4, 2020 until October 4, 2020.

(2) On October 1, 2020, the assistant manager of the store at which claimant worked informed claimant that, starting the next day, claimant would work as a store greeter.¹ On October 2 and 3, 2020, claimant worked as a store greeter. The task required claimant to greet customers as they arrived and urge them to take a mask if needed, which were stored in individual bags and contained in a basket near where claimant was standing. Claimant wore a mask while greeting, and most of her interactions with unmasked customers were brief.

¹ The store greeter position was a light-duty task that complied with work restrictions imposed in connection with claimant's worker's compensation claim, which was pending at the time.

(3) Claimant was uncomfortable performing the store greeter role because, based on a conversation with the employer's checkout area manager, she thought greeting required her to hand out masks directly to unmasked customers, which she did not believe allowed her to maintain six feet of distance.

(4) On October 4, 2020, claimant arrived at the store for her shift and informed the assistant store manager that she did not wish to greet because of her concerns about maintaining six feet of distance from unmasked customers. The assistant store manager told claimant to maintain six feet of distance and informed her that she was not required to hand out masks directly to unmasked customers, but merely needed to point out the basket where the masks intended for customers were stored. Claimant did not raise her concerns about proximity to unmasked customers to the store manager or anyone else senior to the assistant store manager. Nor did claimant file a complaint under the employer's complaint resolution process about her proximity to unmasked customers. Had claimant filed a complaint, the employer may have offered claimant a task where she could feel more safe while working.

(5) For about an hour thereafter, claimant continued greeting. During that time, a customer had begun standing within six feet of claimant. The checkout area manager saw the proximity of the customer to claimant and asked the customer to move. The customer did so, and claimant commented to the customer that she did not understand why the checkout area manager "was being so mean." April 20, 2021 Transcript at 54.

(6) Moments later, the checkout area manager instructed claimant to join a meeting with her and the assistant store manager. During the meeting, the checkout area manager told claimant that her comment to the customer was insubordinate and that claimant had been standing too close to the customer. The managers did not mention taking any disciplinary action against claimant.

(7) Claimant felt she had been unfairly disciplined in the meeting and "just had had enough." April 20, 2021 Transcript at 10. As a result, claimant decided to quit working for the employer, abruptly left the meeting, departed from the store, and did not return.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause. Order No. 21-UI-165987 is modified to correct the effective date of disqualification.

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 on October 4, 2020 because she felt she was being unfairly disciplined during the meeting in which she was informed that she had made an insubordinate comment and had been standing too close to a customer. The record suggests claimant was also motivated to quit because she was uncomfortable working as a store greeter and believed it did not allow her to maintain six feet of

distance from unmasked customers. As a preliminary matter, the parties disagreed at hearing as to whether claimant had made an insubordinate comment and whether any disciplinary action was discussed during the meeting between claimant and the two managers. April 20, 2021 Transcript at 37, 54; April 20, 2021 Transcript at 9; April 23, 2021 Transcript at 8. The evidence on these points is equally balanced. Where the evidence is no more than equally balanced, the party with the burden of persuasion—here, claimant—has failed to satisfy her evidentiary burden. Consequently, on these disputed points, this decision’s findings of fact are based on the employer’s evidence.

To the extent that claimant quit work because she felt she was unfairly disciplined during the meeting on October 4, 2020, claimant quit work without good cause. Given that the employer’s decision to hold the meeting with claimant was not unreasonable in light of claimant’s comment to the customer and that claimant did not actually face any disciplinary consequences during the meeting, claimant did not establish that her situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit. The record suggests that even if claimant had received discipline at the meeting, her situation would not have been of such gravity that she would have had no reasonable alternative but to quit. Claimant failed to offer evidence that the October 4, 2020 meeting with the managers caused her anything other than disappointment or job dissatisfaction, and therefore did not show that no reasonable and prudent person would have continued to work for the employer for an additional period of time on that basis.

To the extent that claimant quit because she was uncomfortable working as a store greeter and believed it did not allow her to maintain six feet of distance from unmasked customers, claimant also quit work without good cause. The record does not support that store greeting presented claimant with a grave situation. Claimant wore a mask while greeting, most of her interactions with unmasked customers were brief, and she was not required to hand out masks while greeting—she merely needed to point out the basket where the masks intended for unmasked customers were stored. Even if the record showed that her discomfort in the role was grave, claimant also failed to pursue reasonable alternatives to quitting on this basis. For example, claimant did not raise her concerns about proximity to unmasked customers while greeting to the store manager, or file a complaint under the employer’s complaint resolution process about her proximity to unmasked customers. Had claimant filed a complaint, the employer may have offered claimant a task where she could feel more safe while working.

For the above reasons, the record supports that claimant quit work without good cause on October 4, 2020. Because claimant quit work on October 4, 2020, Order No. 21-UI-165987 is modified such that claimant’s disqualification from benefits is effective October 4, 2020.

DECISION: Order No. 21-UI-165987 is modified, as outlined above.

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

DATE of Service: June 22, 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 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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