

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0423

Reversed
Disqualification

PROCEDURAL HISTORY: On December 21, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 92335). The employer filed a timely request for hearing. On May 25, 2021, ALJ Janzen conducted a hearing at which claimant failed to appear, and issued Order No. 21-UI-167451, affirming decision # 92335. On May 28, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) J N B Trucking employed claimant as a driver from July 1, 2020 until August 24, 2020.

(2) The employer had a policy stating that if an employee were to be “absent or have excessive absenteeism due to medical illness” that the employee would have to provide a doctor’s note verifying that the employee had seen a medical provider and was under treatment. Audio Record at 17:55. The doctor’s note was not required pursuant to a collective bargaining agreement, statute, or local ordinance.

(3) The employer provided an optional health insurance plan. To participate, an employee was required to pay a portion of the insurance premium. Claimant had chosen not to purchase the insurance.

(4) Claimant missed ten scheduled shifts in the 45 days of work preceding August 24, 2020. When claimant missed work on those occasions, he called the employer and stated that he was “out sick,” with no further explanation. Audio Record at 14:28.

(5) On August 24, 2020, the employer gave claimant a written reprimand stating that if claimant missed any additional work due to illness in the next 90 days, he would need to provide a doctor’s note to the employer validating those future absences. The reprimand did not request a doctor’s note regarding claimant’s previous absences due to illness, and did not state that claimant was being discharged due to his prior absences. The reprimand did not specify who would pay for the doctor’s note, although the employer typically expected the driver to obtain the note from their personal medical provider. After

reading the reprimand, claimant went to the employer's office and stated, "I guess I don't work here anymore." Audio Record 9:44 to 9:46. Claimant immediately turned in his "paperwork," and his keys and safety equipment, and left the employer's property. Transcript at 9:49.

(6) On August 24, 2020, claimant left work due to the reprimand he received on that day.

CONCLUSIONS AND REASONS: Claimant 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).¹ "[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.

Order No. 21-UI-167451 concluded that because claimant quit work immediately after receiving the August 24, 2020 reprimand, it was reasonable to infer that claimant quit because he did not want to provide a doctor's note for future absences due to illness. Order No. 21-UI-167451 at 2. The order also concluded that claimant had good cause to quit work due to the requirement imposed by the reprimand. Order No. 21-UI-167451 at 2. The order under review relies on ORS 659A.306(1), which provides that it is an unlawful employment practice for any employer to require an employee as a condition of continued employment to pay the cost of any medical examination or the cost of furnishing any health certificate. The order reasoned that by requiring claimant to pay the cost of providing a doctor's note, claimant faced a grave situation because the employer was engaging in an unlawful employment practice, and had no reasonable alternative but to quit work. Order No. 21-UI-167451 at 2-3. The record supports the conclusion that claimant quit because of the August 24, 2020 reprimand, but does not support the inference that claimant quit because he was required to provide a doctor's note for future absences due to illness, and not because he was dissatisfied that the employer disciplined him for excessive absences. Moreover, the record does not show that claimant had good cause to quit for either reason.

To the extent claimant quit work because he was dissatisfied that he received a reprimand for his absences, claimant did not have good cause to quit work when he did. Claimant did not face a grave situation due to having received a reprimand for absenteeism because the reprimand did not state that claimant was being discharged, and the record does not show that claimant was not able to avoid future discipline by complying with the requirement imposed by the reprimand. Based on this record, future discharge was not inevitable.

Claimant also did not have good cause to quit due to the requirement that he provide a doctor's note for future absences due to illness. The reprimand did not require claimant to pay to obtain a doctor's note

¹ Although claimant had multiple absences due to illness, the record does not show that claimant had a physical or mental impairment that would require the application of a modified standard for a person with an impairment who quits work.

for past absences. Thus, to the extent that claimant would be required to pay for a doctor's note, claimant did not yet face a grave situation when he quit. Had he needed to miss work again due to illness, and had he needed to pay for a doctor's note, only then would his circumstances have potentially been grave. In addition, had claimant faced those circumstances, he would have had the reasonable alternative of complaining to the employer about the cost of obtaining a doctor's note. Because the record does not show that claimant would have a future absence due to illness, the record does not show that it would have been futile for claimant to complain to the employer about the potential cost of obtaining a doctor's note. On this record, claimant did not face a grave situation due to the requirement that he provide a doctor's note for future absences due to illness.

For the foregoing reasons, claimant quit work without good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits under ORS 657.176(2)(c) effective August 23, 2020.

DECISION: Order No. 21-UI-167451 is set aside, as outlined above.

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

DATE of Service: July 2, 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 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

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 الإستئناف 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.