

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0439

Modified
Disqualification Effective September 27, 2020 (Week 40-20)

PROCEDURAL HISTORY: On January 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 September 27, 2020 (decision # 142716). Claimant filed a timely request for hearing. On February 8, 2021, ALJ Wyatt conducted a hearing, which was continued on May 4, 2021 in order to provide notice to the correct employer.¹ On May 12, 2021, ALJ Wyatt issued Order No. 21-UI-166657, modifying decision # 142716 to conclude that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective October 4, 2020. On May 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument² 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).

¹ The order under review concluded that claimant worked for an Orangetheory franchisee located at the address listed on this decision. Order No. 21-UI-166657 at 1. However, the record shows that both the order under review and the notice of hearing issued prior to the May 4, 2021 hearing continuation were issued to a different, unrelated Orangetheory franchisee located elsewhere. Therefore, the correct employer of record was not notified of the hearing or provided with a copy of the order under review and was not given an opportunity to participate. If the employer wishes to submit evidence regarding this matter, they may do so by filing a request for reconsideration with EAB. A request for reconsideration is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. *See* OAR 471-041-0145 (May 13, 2019).

² In her written argument, claimant expressed concern that she did not receive benefits in November 2020 after another separation from a different employer. When a determination has been made that a claimant has separated from work for a disqualifying reason, such as the separation at issue in this decision, the claimant is disqualified from receiving regular unemployment insurance benefits until they have earned at least four times their weekly benefit amount in a subsequent period of employment. *See* ORS 657.176(2). Thus, even if claimant worked for another employer in November 2020 and then separated for a non-disqualifying reason, such as a layoff due to lack of work, this disqualification would remain effective until the point at which claimant had earned four times her weekly benefit amount with another employer.

FINDINGS OF FACT: (1) Orangetheory Fitness employed claimant as a sales associate at the employer's facility in Tigard, Oregon from October 2019 until October 3, 2020.

(2) At the time she worked for the employer, claimant resided with her parents in Molalla, Oregon. The commute from her home to the employer's facility took claimant about 45 minutes to an hour each way. May 4, 2021 Transcript at 11.

(3) On September 27, 2020, claimant began remotely attending classes at Portland Community College. Claimant was not required by law to attend school. Claimant's mother was pregnant at the time, and ultimately gave birth on or around October 9, 2020. Claimant assisted her parents in taking care of the baby after its birth.

(4) On October 3, 2020, claimant voluntarily quit work because she felt that she would not be able to continue commuting to the employer's facility while attending school and assisting her parents in caring for the baby.

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). 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. Per OAR 471-030-0038(5)(b)(D), leaving work without good cause includes leaving to attend school, unless required by law.

Claimant voluntarily quit work on October 3, 2020 in order to attend school and help care for the new baby in her household. To the extent that claimant quit work in order to attend school, Department rules dictate that claimant voluntarily quit work without good cause unless she was required by law to attend school. Claimant bears the burden of proof to show that she quit with good cause. Because the record does not show that claimant was required by law to attend school, claimant has not met that burden, and therefore, to the extent claimant quit work to attend school, she quit work without good cause.

To the extent that claimant quit work in order to assist with the care of the new baby, the record does not show that doing so amounted to a reason of such gravity that she had no reasonable alternative but to leave work. Claimant did not offer evidence to show that she was responsible for care of the baby for a significant portion of the day and that no other caregivers besides her could have performed those duties instead.

For the above reasons, claimant voluntarily quit work without good cause on October 3, 2020 and is disqualified from receiving benefits for that reason. Although the order under review also found that claimant quit work without good cause on October 3, 2020, the order erroneously concluded that

claimant's disqualification from benefits was effective October 4, 2020 (week 41-20). Order No. 21-UI-166657 at 3. Because the disqualification from benefits is effective the week of claimant's work separation, the order under review is modified such that claimant's disqualification from benefits is effective September 27, 2020 (week 40-20).

DECISION: Order No. 21-UI-166657 is modified, as outlined above.

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 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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