

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0465

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 4, 2020, 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 May 31, 2020 (decision # 91533). Claimant filed a timely request for hearing. On May 27, 2021, ALJ Murdock conducted a hearing, and on June 1, 2021 issued Order No. 21-UI-167828, affirming decision # 91533. On June 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Capitol Data & Communications, Inc. employed claimant as an install tech from June 1, 2020 until June 5, 2020. Claimant worked for the employer full time and was paid about \$40.00 per hour.

(2) The employer was based in Milwaukie, Oregon and serviced customers in the Portland, Oregon metro area. At the time claimant worked for the employer, his permanent residence was in Prineville, Oregon. Because the employer was located too far away for claimant to commute back and forth daily, claimant rented a room from his wife's friend, who lived near where claimant was working for the employer. Claimant initially was charged about \$500.00 per month for the room.

(3) Some time before claimant quit working for the employer, claimant's wife's friend informed claimant that she would be raising the rent to approximately \$1,000.00 per month. Transcript at 21. Around the same time, claimant also became "uncomfortable" with "riots" that were occurring near

where he was staying. Transcript at 21. Claimant did not seek any alternate living arrangements in the area.

(4) During the week in which claimant began working for the employer, claimant received an offer of other work from his former employer Stoner Electric, which was located in Prineville, Oregon. Stoner Electric offered to bring claimant back full time at a rate of pay of approximately \$35.00 per hour. The job that Stoner Electric offered to claimant was not immediately available because there were some processes that needed to be completed through claimant's union, and they "just needed to get everything in line." Transcript at 17. Claimant accepted the job offer and on June 5, 2020, claimant voluntarily quit working for the employer so that he could return to work for Stoner Electric. Claimant began working for Stoner Electric sometime in July 2020.

(5) When claimant filed his initial claim for unemployment insurance benefits, the Department determined that claimant's weekly benefit amount was \$605.00.

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.

A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left." OAR 471-030-0038(5)(a). In pertinent part, the Department does not consider a job offer to be definite "if [it] is contingent upon . . . [such things as] passing a drug test, background check, credit check, and/or an employer receiving a contract." Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

At hearing, claimant identified two reasons for voluntarily quitting: because he had received an offer of work from his former employer Stoner Electric, and because he had become uncomfortable with the temporary living situation he had taken when he accepted the job with the employer.

To the extent that claimant quit to accept an offer of other work, claimant has not shown that he had good cause to quit under OAR 471-030-0038(5)(a). Although the record shows that the other work paid more than his weekly benefit amount¹, it does not show either that the work offer was definite or that it was to begin in the shortest length of time as could be deemed reasonable under claimant's

¹ Assuming that full-time work for Stoner Electric was 40 hours per week, the work paid about \$1400.00 per week.

circumstances. Claimant testified that the work for Stoner Electric could not begin immediately because some union-related processes needed to be completed first. Because the record does not show that they were completed prior to the date on which claimant voluntarily quit, more likely than not, the work offer was contingent upon the completion of those processes. For that reason, the work offer was not definite.

When the ALJ asked claimant why he did not continue working for the employer until Stoner Electric was ready for him to begin work, claimant testified that he did not do so because his living situation “wasn’t working out,” citing both the rent increase and the “riots” that had been taking place nearby. Transcript at 18. While such a rent increase—claimant testified that the rent was effectively doubled to about \$1,000.00 per month—is understandably upsetting, the record shows that the employer was paying claimant about \$1,600.00 per week. Claimant did not show either that he was unable to afford the rent increase, or that he would have netted less by continuing to work for the employer for several more weeks before returning home. Similarly, while claimant testified that he was “uncomfortable” with the civil unrest that had been taking place nearby, he did not offer any evidence to show that the circumstances posed any actual danger to him or that he experienced anything other than discomfort as a result. Accordingly, claimant has not shown that continuing to work for the employer until the other job was available would not have been reasonable, and that the other work began in the shortest length of time as could be deemed reasonable under his individual circumstances.

To the extent that claimant quit when he did because of the uncomfortable situation he found himself in while renting a room from his wife’s friend, claimant has not shown that he had good cause to quit under OAR 471-030-0038(4). Claimant did not show either that he could not afford the rent increase he was facing or that it would have resulted in a net loss when compared to returning home and not working until the other work was available to him. Likewise, claimant did not show that the “riots” taking place nearby caused him anything other than discomfort. Claimant therefore has not met his burden to show that he faced a situation of such gravity that he had no alternative but to quit and that no reasonable and prudent person in claimant’s circumstances would have continued to work for the employer for an additional period of time.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 31, 2020.

DECISION: Order No. 21-UI-167828 is affirmed.

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

DATE of Service: July 16, 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 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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