

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0467

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 16, 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 June 14, 2020 (decision # 131828). Claimant filed a timely request for hearing. On May 27, 2021, ALJ Mott conducted a hearing at which the employer failed to appear, and on June 1, 2021 issued Order No. 21-UI-167781, affirming decision # 131828. On June 14, 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 her 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. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Groundworks Services, Inc. employed claimant as a budtender from December 2018 until June 15, 2020.

(2) Beginning in March 2020, following the onset of the COVID-19 pandemic, claimant became concerned with the response of the employer's corporate office to the pandemic. Initially, the employer did not provide face masks to employees, provided insufficient amounts of hand sanitizer, did not limit the number of customers allowed in the store at one time, did not display signage relating to COVID-19 restrictions such as mask-wearing and social distancing, had a Plexiglas shield at one of the store's three points of sale, and did not develop a curbside delivery system for the store. As a result of the corporate office's response, claimant felt unsafe at work. Transcript at 21. Despite the corporate response to the pandemic, the staff and managers at claimant's individual store took safety measures such as using tape on the floor to create social-distancing guides. By June 2020, the employer had made face masks available to employees, had installed more Plexiglas shields, had begun offering curbside pickup, and the store managers were able to obtain hand sanitizer for the store.

(3) On June 12, 2020, claimant received an email from a project manager at Albina Construction LLC (Albina), who told claimant that they might need help on some upcoming jobs starting on July 1, 2020, pending approval of a building permit for which they had applied. On the same day, claimant verbally gave the employer notice that she intended to resign. On June 15, 2020, claimant worked her last shift for the employer.

(4) On July 2, 2020, claimant met with Albina to determine what sort of work they would need her to perform, and began working for them around that time.

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).

Claimant voluntarily quit work due to her concerns that the employer had not taken adequate safety precautions in response to the COVID-19 pandemic, and because she had received another offer of work. To the extent that claimant quit due to safety concerns, she did not show that she faced a situation of such gravity that she had no reasonable alternative but to leave work. At hearing, claimant testified that she “had dealt with” COVID-19 previously and was “ready to continue to deal with” it. Transcript at 9. The record does not show that claimant faced a heightened risk of contracting the virus or that she or anyone she lived with was at heightened risk of complications from COVID-19. Further, while the record suggests that the employer could have taken more precautions to prevent the spread of COVID-19 at the store, the evidence indicates that the situation was improving at the time that claimant left. For instance, while the employer did not initially supply face masks to employees, claimant did not indicate that she was unable to obtain one on her own, and in any case she testified that there was a “stack of masks” available by the time she quit. Transcript at 10–11. Similarly, the record shows that curbside pickup—which claimant had identified as a safety measure the employer had previously failed to take—started around the time she quit, indicating that the employer had begun to take safety concerns more seriously. Claimant also testified that the local store managers were “great.” Transcript at 14. Therefore,

claimant did not show that no reasonable person would have continued to work for the employer for an additional period of time based on the safety concerns she identified.

To the extent that claimant quit in order to accept other work with Albina, she also has not shown that she quit with good cause. The record shows that at the time claimant quit, she and Albina had planned to meet on July 1, 2020, and ultimately did meet on July 2, 2020, in order to “sort of see what they needed” claimant do to. Transcript at 16. Although claimant testified that she “wanted to make sure [she] was meeting the same number of hours” at Albina compared to how much she had been working for the employer, the record does not show that the offered work paid more than her work for the employer, or that it paid more than or equal to her weekly benefit amount. Transcript at 16. Even assuming that the other work *did* pay more than the job she left or more than or equal to her weekly benefit amount, however, claimant did not offer evidence to explain why she could not have continued working for the employer for another two weeks before leaving to work for Albina. For that reason, the record does not show that the other work began in the shortest length of time as can be deemed reasonable under the individual circumstances. Additionally, the record shows that Albina’s offer to claimant for work starting in July 2020 was contingent upon the approval of a building permit. Exhibit 1 at 4. For that reason, the work offer was not definite. Therefore, to the extent that claimant quit to accept an offer of other work, she quit without good cause under OAR 471-030-0038(5)(a).

For the above reasons, claimant voluntarily quit without good cause, and is disqualified from receiving unemployment insurance benefits effective June 14, 2020.

DECISION: Order No. 21-UI-167781 is affirmed.

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

DATE of Service: July 20, 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.surveymoz.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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