

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0531

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 23, 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 July 12, 2020 (decision # 114311). Claimant filed a timely request for hearing. On June 15, 2021, ALJ Logan conducted a hearing at which the employer failed to appear, and on June 16, 2021 issued Order No. 21-UI-168823, affirming decision # 114311. On June 29, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her July 2, 2021 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 claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB therefore did not consider claimant's July 2, 2021 written argument.

Claimant's July 18, 2021 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. EAB considered claimant's July 18, 2021 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Department of Human Services employed claimant, most recently as a caseworker, from February 15, 2019 until July 17, 2020.

(2) At the time that claimant worked for the employer, claimant was in her early 30's, unmarried, and lived with her extended family, as was traditional per the culture of her country of origin.

(3) At some point prior to July 2020, claimant's parents became concerned about the high cost of living in Oregon, and subsequently began searching for housing in Indiana, where other family members and family friends also resided. Around June or July 2020, claimant's parents were approved for a loan and purchased a house in Indiana.

(4) Because claimant's parents were moving to Indiana, claimant determined that she would quit working for the employer in order to accompany them and continue living as part of the family unit. Claimant's parents moved to Indiana before claimant in order to prepare the house, while claimant planned to move at the end of August 2020. At the time, claimant was still new to her role with the employer as a case manager, and was still in training. After speaking with her manager, claimant determined that it would be considered "bad customer service" and inconsiderate to management if she began working in her new role and building a caseload only to leave a few weeks later. Audio Record at 11:07. Additionally, claimant believed that, until the time that she moved to Indiana, she would be able to work at her parents' restaurant in Oregon. For these reasons, on or around July 10, 2020, claimant notified the employer that she planned to quit effective July 17, 2020.

(5) On July 17, 2020, claimant worked her last shift for the employer. Claimant had intended to work at her parents' restaurant until she moved to Indiana, but was unable to do so because she contracted COVID-19. Claimant ultimately moved to Indiana to live with her family at the end of August 2020.

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).

Claimant voluntarily quit work in order to move to Indiana and continue living with her family. Claimant's choice to do so was influenced by the cultural traditions of her country of origin. At hearing, claimant did not identify any additional circumstances which led to her decision to quit, effective July 17, 2020, such as a need to provide care for her parents¹ or a lack of ability to remain in Oregon and live

¹ Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. "Compelling family reasons" includes, under OAR 471-030-0038(1)(e)(B), the illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off.

on her own. Without such circumstances, the record does not show that claimant quit for a reason of such gravity that she had no reasonable alternative but to leave work approximately six weeks prior to when she intended to move to Indiana. Therefore, while claimant's decision to move with her family is understandable given her cultural traditions, claimant has not shown that no reasonable and prudent person faced with such circumstances would have continued working for the employer for an additional period of time.

To the extent claimant quit when she did because she had determined that it would be considered "bad customer service" and inconsiderate to management if she began working in her new role and building a caseload only to leave a few weeks later, she quit without good cause. While claimant's concern about inconveniencing her clients and managers was understandable, claimant did not offer evidence to show that continuing to work for an additional six weeks would have caused the employer or their clients to suffer greater inconvenience than they did as a result of claimant's departure. Therefore, to the extent that claimant quit in order to spare the employer and their clients the inconvenience of having to change caseworkers after a few weeks, claimant has not shown that she quit for a reason of such gravity that she had no reasonable alternative but to quit when she did.

Although the record suggests that claimant would have quit and moved to Indiana regardless of whether she believed that she could work at her parents' restaurant up until the time that she moved, it is not clear from the record whether claimant would have instead continued working for the employer (or planned to do so) if the restaurant job had not been available to her. To the extent that claimant quit when she did to accept the offer of restaurant work, she quit without good cause under OAR 471-030-0038(5)(a). The hearing record does not show whether the restaurant job paid either more than the case-worker position with the employer or at least as much as claimant's weekly benefit amount; whether the offer to work at the restaurant was definite; or whether the work would have started in the shortest time reasonable under the circumstances. However, even if the record had showed that all three of these criteria were met, the work was not reasonably expected to continue. Rather, the record shows that, had claimant not fallen ill with COVID-19,² she would likely have worked at the restaurant for only six weeks before moving to Indiana.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective July 12, 2020.

DECISION: Order No. 21-UI-168823 is affirmed.

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

DATE of Service: August 5, 2021

² Under *former* OAR 471-030-0070(1)(a) (effective March 8, 2020 through September 12, 2020), a person who voluntarily quits work due to a "COVID-19 related situation," which includes being "unable to work because they are ill with the novel coronavirus," is not disqualified from receiving benefits. However, because claimant voluntarily quit working for the employer before she became ill with COVID-19, the record does not show that claimant quit for a "COVID-19 related situation."

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.