

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0534

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 18, 2020 (decision # 72441). Claimant filed a timely request for hearing. On June 28, 2021, ALJ Wyatt conducted a hearing and issued Order No. 21-UI-169516, reversing decision # 72441 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits. On July 2, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Trion Solutions II, Inc., is a temporary employment agency that has employed claimant at various times since 2017, most recently from October 15, 2020 to October 23, 2020.

(2) Claimant relocated from Pennsylvania to Oregon in 2016. Since that time, claimant had worked for the employer during return visits to Pennsylvania.

(3) Prior to October 1, 2020, claimant was approved for Section 8 housing in Washington and was living in Oregon until their October 1, 2020 move-in date to the Section 8 housing. Claimant was subsequently advised that their Section 8 housing would not be available until sometime in November 2020. Claimant chose to return to Pennsylvania while they waited for a new move-in date.

(4) On October 13, 2020, the employer offered claimant a full-time “temp-to-hire” position in Pennsylvania. Audio Record at 19:37. Claimant accepted the position, but did not advise the employer that they would be returning to live permanently in Washington once they had received a new move-in date for the Section 8 housing.

(5) On October 15, 2020, claimant attended an orientation for the full-time position.

(6) On October 19, 2020 through October 22, 2020, claimant worked full-time shifts for the employer from 12:00 a.m. to 8:00 a.m. At some point during these days, claimant received a telephone call telling them that their Section 8 housing was ready for move-in as of November 1, 2020.

(7) On October 23, 2020, claimant did not report to work for their shift. The employer contacted claimant and claimant stated that they were returning “west” because of the Section 8 housing opportunity and that they would no longer be working for the employer. Audio Record at 18:50. The employer would not have offered claimant the full-time position had they known claimant would be permanently moving to Washington prior to November 1, 2020.

CONCLUSIONS AND REASONS: Claimant voluntarily quit working for the employer with 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.

The preponderance of the evidence demonstrates that claimant returned to Pennsylvania based on their ties to the area and because they were uncertain when they would receive a confirmed move-in date for their approved Section 8 housing in Washington. However, at all times claimant intended that their time in Pennsylvania would be temporary because they were intent on taking advantage of their approved Section 8 housing in Washington, which is a significant public benefit. It was therefore reasonable for a person in claimant’s position to have sought employment with a temporary employment agency like the employer, given the uncertain duration of claimant’s stay in Pennsylvania. Shortly after claimant’s October 19, 2020 start date, claimant was notified that they could move into their Section 8 housing on November 1, 2020. Here, claimant’s prioritization of access to permanent section 8 housing, and the significant public benefit that entailed, coupled with the temporary nature of claimant’s employment, were reasons of such gravity, that claimant had no reasonable alternative but to leave work on October 23, 2020. Moreover, a reasonable and prudent person in claimant’s position would have quit their employment on October 23, 2020, given the significance of access to permanent Section 8 housing in Washington compared to temporary employment in Pennsylvania, the November 1, 2020 move-in date, and the significant distance claimant would need to travel to return to Washington prior to November 1, 2020. Likewise, the significant distance between claimant’s Section 8 housing in Washington and the

employer's location in Pennsylvania meant that continuing to work for the employer was not a reasonable alternative to leaving. Nor does the record support the conclusion that other reasonable alternatives existed.

Claimant voluntarily quit their employment with good cause and they are not disqualified from receiving unemployment insurance based on this work separation.

DECISION: Order No. 21-UI-169516 is affirmed.

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

DATE of Service: August 6, 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.

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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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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