

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0539

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer, which did not disqualify claimant from receiving unemployment insurance benefits (decision # 140836). The employer filed a timely request for hearing. On June 24, 2021, ALJ Logan conducted a hearing, and on June 25, 2021 issued Order No. 21-UI-169439, reversing decision # 140836 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective August 23, 2020. On July 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Claimant's argument¹ 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. 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 the employer's and claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) Medical Eye Services of Oregon, Inc. employed claimant as a part-time administrative assistant from November 2016 until August 24, 2020.

(2) The employer paid claimant \$16.50 per hour. Between January 2019 and December 2019, claimant worked an average of about 31 hours per month. Exhibit 1 at 16.

¹ Claimant filed two written arguments on July 6, 2021 and July 7, 2021. The arguments are identical except that the July 6, 2021 argument lacks a declaration that claimant provided a copy of the argument to the opposing party. For purposes of this decision, "Claimant's Written Argument" refers to the July 7, 2021 argument, which was served on the employer.

(3) On March 18, 2020, The Portland Clinic offered claimant a position as a credentialing specialist, which paid \$23.00 per hour and would have given claimant 20 hours per week. The position was to begin on April 6, 2020. Claimant accepted the offer and, on March 23, 2020, gave the employer two weeks' notice that she was quitting to accept the offer from The Portland Clinic.

(4) On April 3, 2020, The Portland Clinic notified claimant that they had moved the start date of her new position to early May 2020 as a result of the COVID-19 pandemic. As a result, and because claimant "didn't want to put [the employer] in a bad position" by leaving, claimant decided to temporarily continue working for the employer until she was able to start her job with The Portland Clinic. Transcript at 12. On May 11, 2020, The Portland Clinic's recruiter suggested to claimant that she might be eligible for unemployment insurance benefits due to the delayed start date. Claimant subsequently filed an initial claim for benefits and claimed several weeks of benefits while working for the employer.

(5) On August 11, 2020, The Portland Clinic's recruiter informed claimant that, due to reduced staffing needs, she did not believe she would need to hire someone for the position until 2021, and that she would "circle back" with claimant once they were ready to hire. Exhibit 1 at 10. The Portland Clinic never offered claimant a start date for the job they had offered her in March 2020, and claimant never went to work for them.

(6) Claimant continuously worked for the employer through August 2020. From January 2020 through July 2020, claimant worked an average of about 29 hours per week. Claimant worked 14 hours during August 2020.

(7) In August 2020, claimant began to feel that her supervisor was behaving in a hostile manner towards her, as the supervisor had stopped greeting her at the beginning and end of claimant's shifts, and generally communicated with her less. The supervisor also took back claimant's key to the facility, which claimant did not need to access her workspace. At the same time, claimant became frustrated with the fewer hours that she had been working.

(8) On August 24, 2020, claimant's supervisor told claimant that she was "uncomfortable" with the fact that claimant had been claiming benefits while claimant had "refused some work" for the employer. Transcript at 16–17. In response, as a result of her frustrations with her supervisor, the amount of hours she was working, and her belief that she would eventually begin to work for The Portland Clinic, claimant told the employer that she was "just not coming back" and voluntarily quit work. Transcript at 17.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Work Separation Date. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

In her written argument, claimant asserted that she quit her job on approximately March 23, 2020² in order to accept a job with The Portland Clinic, and that she therefore “technically did leave work when [she] gave [her] notice in March of 2020.” Claimant’s Written Argument at 1. Based on a statement in the order under review that “had claimant actually left work with employer pursuant to the notice, she would likely qualify for benefits under Section (5) [of OAR 471-030-0038],” claimant further argued that she “did not believe that [she] had to quit [her] job for [the employer] a second time to follow employment guidelines.” Claimant’s Written Argument at 1, 2; Order No. 21-UI-169439 at 4. In so asserting, claimant essentially suggested that she separated from the employer first on March 23, 2020, and then again on August 24, 2020. However, the record does not support such a conclusion.

While the record is clear that on March 23, 2020, claimant gave the employer notice of her *intent* to quit in two weeks, a work separation did not occur on March 23, 2020 as the employment relationship continued past that date. Likewise, because claimant did not leave work on April 6, 2020 as originally planned, no separation occurred on that date. As claimant continuously worked for the employer through August 24, 2020, the record shows that the only work separation between claimant and the employer occurred on that date. Therefore, the correct date and set of circumstances on which to premise the question of whether claimant voluntarily quit work with good cause is August 24, 2020. *See Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017) (the relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date); *see accord Kay v. Employment Department*, 284 Or App 167, 391 P3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or App 604, 403 P3d 423 (2017); *Kay v. Employment Department*, 292 Or App 700, 425 P3d 502 (2018) (*Kay II*).

Voluntary Quit. 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). A claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e).

² The argument states that claimant quit her job on March 23, 2021. Based on the timing of the events described in the record, this is presumed to be a typographical error.

At hearing, claimant testified that she quit work for several reasons, including a desire to work for The Portland Clinic, frustrations with her supervisor, and dissatisfaction with the number of hours that the employer had been giving her. The employer's testimony that claimant stated she was "just not coming back" after the employer confronted claimant about claiming benefits and refusing work also suggests that this confrontation may have been the incident which motivated claimant to quit work when she did. To the extent that claimant quit due to the change in her working relationship with her supervisor, claimant 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 the change in their working relationship caused her to feel uncomfortable at work, but did not offer evidence showing that the situation caused her more than mere discomfort, or that no reasonable and prudent person facing such discomfort would have continued to work for their employer for an additional period of time.

To the extent that claimant quit work due to an alleged reduction in hours, she also failed to establish good cause. First, the record does not show that claimant's hours were actually reduced. As part of the documents she submitted for admission into the record, claimant included a line graph which listed the total number of hours she had worked during each month between January 2019 and August 2020. Exhibit 1 at 16. The graph shows that claimant's hours fluctuated between 26.5 and 42.5 hours per month through July 2020, before dipping to 14 hours during August 2020. However, because she quit on August 24, 2020, claimant did not work during the last week of August. Further, the employer testified at hearing that there was "a lot of work that [they] had to get done in August [2020]," that she expressed concern to claimant that claimant "was not working very much," and that claimant had been requesting to take time off to accompany her husband on a vacation to the beach. Transcript at 15. Claimant did not refute this testimony. As such, the record suggests that claimant's hours may not have been reduced, but rather that the discrepancy between August 2020 and the preceding months was the result of claimant having voluntarily worked fewer hours in order to take time off from work and subsequently leaving before the month was out.

Even assuming that the employer did reduce claimant's hours, claimant has not proved, by a preponderance of the evidence, either that continuing to work for the employer would have substantially interfered with her return to full time work or that the cost of working exceeded the amount of remuneration received. Regarding the former, claimant offered no evidence. Regarding the latter, claimant testified that it was costing her more to buy gas to get to work than she was making at work. Transcript at 8. However, the employer testified that claimant lived "five minutes" away from work. Transcript at 19. Claimant neither refuted this assertion nor offered additional evidence regarding how much it cost her to go to work each day. Further, claimant's rate of pay was \$16.50 per hour. Even if claimant only worked for a single hour in a day, it seems unlikely without corroborating evidence that it would have cost her that much to purchase the amount of gas needed for a five-minute commute. Therefore, claimant has not met her burden to show that she quit for good cause under OAR 471-030-0038(5)(e).

Finally, while the record suggests that claimant quit mainly due to the two broad concerns discussed above, it also suggests that she did so, at least in part, because she expected to eventually begin work for The Portland Clinic. To the extent that claimant voluntarily quit work in order to accept an offer of other work, claimant also has not shown that she quit for good cause. Given that The Portland Clinic advised claimant, several months after she was initially scheduled to start working for them that they did not anticipate hiring for that position until the following year, it is reasonable to conclude that The Portland

Clinic effectively rescinded their offer to claimant, and that claimant therefore had no offer of other work to accept at the time she quit. Even if the recruiter's promise to "circle back" with claimant when they were ready to hire could be construed as an offer of work, however, the offer was no longer definite, and would have started at least four months after claimant quit, and not in the shortest length of time reasonable under the circumstances. Therefore, to the extent that claimant quit to accept an offer of other work, she did so without good cause.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective August 23, 2020.

DECISION: Order No. 21-UI-169439 is affirmed.

S. Alba and D. Hettle;
A. Steger-Bentz, 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.

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 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 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
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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.