

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0547

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 10, 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 November 29, 2020 (decision # 110613). Claimant filed a timely request for hearing. On June 18, 2021, ALJ McGorin conducted a hearing, and on June 21, 2021 issued Order No. 21-UI-169079, modifying decision # 110613 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective January 3, 2021.¹ On July 7, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's July 9, 2021 written argument when reaching this decision because he did not include a statement declaring that he provided a copy of that argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's July 11, 2021 written 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 him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's July 11, 2021 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Wireworks employed claimant as an account manager and purchasing agent from October 26, 2020 to January 4, 2021. Claimant worked 40 hours per week at a wage of \$25 per hour.

(2) The employer's business involved converting factory vehicles into vehicles for use by police, fire departments, state agencies, construction companies, and other entities with specialized vehicle needs. Claimant's job duties included maintaining customer relationships by helping them decide what changes were necessary to convert factory vehicles into the type of vehicles they needed for their business

¹ Although Order No. 21-UI-169079 concluded that the order affirmed decision # 110613, it modified the decision by changing the effective date of the disqualification from November 29, 2020 to January 3, 2021. Order No. 21-UI-169079 at 3.

activities and then forwarding that information to the relevant technicians. The employer's business environment was fast-paced and typically required employees to multitask.

(3) At the beginning of December 2020, claimant contracted COVID-19 and was off work for approximately one month. While claimant was absent, the employer's owner discovered some problems with claimant's work performance, which the owner and others were able to resolve.

(4) On January 4, 2021, claimant returned to work. The owner met with claimant to discuss the work performance problems he had discovered and asked claimant to identify the aspects of his job that caused him difficulty in completing his work. Claimant told the owner that he had difficulty resolving multiple tasks at the same time. In response, the owner told claimant that he would reduce claimant's workload temporarily so that he felt able to complete each required task successfully. The owner stated that after claimant's skills improved, the employer would increase claimant's workload. The owner also told claimant that he would evaluate claimant's progress in two weeks. At the end of their conversation, the owner asked claimant to notify him that day whether he wanted to continue working for the two-week evaluation period, or just leave the job. Claimant told the owner that he would complete his shift that day and let the owner know his decision after he discussed it with his wife.

(5) Claimant felt that the reduced workload the owner had offered was "doable." Transcript at 22. However, claimant believed that his employment was not likely to continue based on the owner's concern about claimant's past work performance, and because claimant was concerned about whether his work performance would improve enough to meet the employer's standards. Transcript at 21, 22-23. He also believed that he had opportunities to obtain work elsewhere if he acted quickly. Transcript at 9.

(6) Later the evening of January 4, 2021, claimant sent the owner a text message thanking the owner for giving him "options," but stating that he would look for other work that was "a better fit" for him instead of returning to work for the employer. Transcript at 15.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

Work Separation. 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). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, when asked by the ALJ whether he quit his job with the employer, claimant responded that it was "complicated" because the employer gave him the option of leaving work on January 4, 2021 or continuing to work "for like two weeks." Transcript at 6. The record shows that claimant could have continued to work through the two-week period offered by the owner, and potentially longer once the owner evaluated claimant's work performance at the end of that time. However, claimant decided on January 4, 2021 that he was no longer willing to work for the employer despite having the opportunity to do so. Accordingly, the work separation was a voluntary leaving that occurred on January 4, 2021.

Voluntary Leaving. 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.

For purposes of applying OAR 471-030-0038(4), leaving work without good cause includes “[l]eaving suitable work to seek other work.” OAR 471-030-0038(5)(b)(A). Under ORS 657.190, to determine whether any work is suitable for an individual, the factors to be considered include the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. Under ORS 657.195, no work is deemed suitable if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

To the extent claimant quit work when he did because he was concerned that the employer would not continue his employment after two weeks of a reduced workload, claimant failed to establish good cause to quit under OAR 471-030-0038(4). Although claimant had had trouble meeting the employer’s performance expectations due to his difficulty with multitasking, the owner had offered to reduce his workload temporarily to where claimant felt comfortable and could successfully complete each required task. Claimant considered the reduced workload that the owner had offered to be “doable,” and the owner told him that his workload would increase only after his skills had improved. The record does not show that continuing to work under those circumstances constituted a situation so grave that no reasonable and prudent person would have accepted the alternative of remaining at work for at least the next two weeks in an attempt to meet the employer’s standards.

To the extent claimant quit work when he did to seek other work that was “a better fit” for him, he failed to establish good cause to quit under OAR 471-030-0038(5)(b)(A). Viewed objectively, the record fails to show that the work claimant left was unsuitable based on any of the factors to be considered under ORS 657.190 because claimant believed that the reduced workload was “doable” and the owner was willing to give claimant time to improve his multitasking skills. The record also fails to show that the work that claimant left was unsuitable under ORS 657.195 based on the wage, hours or other conditions of his job because claimant described the job that he left to be “a great job.” Transcript at 22.

For the reasons stated, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 3, 2021, and until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-169079 is affirmed.

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

DATE of Service: August 11, 2021

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.

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.

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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