

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0551

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged but not for misconduct, and was not disqualified from receiving unemployment insurance benefits. (decision # 163417). The employer filed a timely request for hearing. On March 31, 2021, ALJ Griffin conducted a hearing, and on April 2, 2021 issued Order No. 21-UI-164039, affirming decision # 163417. On April 22, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Avamere Sherwood Operations LLC employed claimant full-time as a certified nursing assistant at its facility in Beaverton from July 5, 2019 until October 14, 2020. The employer paid claimant \$14.92 per hour.

(2) The employer directly employed certified nursing assistants at its Beaverton facility in full-time, part-time, and on-call positions. At some of their facilities, the employer or other subsidiaries of the Avamere parent company scheduled certified nursing assistants who worked for them through staffing or employee leasing companies.

(3) On or prior to October 1, 2020, claimant received an offer of employment from Express, a staffing or employee leasing company, to work at another Avamere facility in Laurelhurst. The offer was for full-time work and paid \$21.00 per hour. Claimant expected the work for Express at the Laurelhurst facility to continue indefinitely so long as she satisfactorily performed her work.

(4) On October 1, 2020, claimant delivered a schedule-change form to the employer in which she indicated that she needed to be scheduled on-call only starting on October 15, 2020 because she had gotten another full-time job. Audio Record at 10:05 to 10:23. Claimant intended to continue working for

the employer in an on-call capacity while working at the other facility for Express. The employer did not have an on-call position available for claimant at the Beaverton facility at that time.

(5) Claimant was scheduled to work for the employer through October 14, 2020. Claimant worked all of her scheduled shifts through October 14, 2020.

(6) Express required claimant to complete paperwork, a background check, and a COVID-19 test prior to beginning her work at the Laurelhurst facility. All of these items were completed before claimant finished her final shift at the Beaverton facility.

(7) On October 15, 2020, claimant began working for Express at the Laurelhurst facility.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

Nature of the 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).

The order under review concluded that claimant “was willing, and in fact was very eager, to continue in an employment relationship with employer, albeit on a different schedule than what she had worked previously,” but that the employer discharged claimant because they “had no positions available on claimant’s new schedule” and therefore “was unwilling to continue in an employment relationship with claimant.” Order No. 21-UI-164039 at 2. The record does not support this conclusion.

While claimant never expressed to the employer that she wished to quit, and did intend to continue the employment relationship in some fashion, the record does not show that after October 14, 2020, claimant was willing to continue working for the employer full-time, as she had been since July 5, 2019. Rather, claimant unilaterally declared to the employer—by way of submitting the schedule-change form on October 1, 2020—that she had accepted an offer of full-time employment elsewhere, and that she would continue working for the employer in an on-call capacity only beginning on October 15, 2020. Implicit in this declaration was that she was only willing to continue working for the employer on those terms. By requiring such a change as a condition of continuing to work for the employer, claimant expressed her unwillingness to continue working for the employer during the hours the employer expected her to be available for work and for which she was hired. Therefore, the record shows that claimant voluntarily quit work after she completed her last shift on October 14, 2020.

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).

Claimant voluntarily quit work in order to accept another, higher-paying job for a different employer. The record shows that the work was definite, because it was not contingent on anything prior to claimant’s voluntary leaving from the Beaverton facility on October 14, 2020. The record also shows that the work began in the shortest length of time as can be deemed reasonable, as claimant began working for Express the day after her last day of work for the employer at the Beaverton facility. Finally, the record shows that claimant reasonably expected the new work to continue, and that it paid more than the previous employer.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-164039 is affirmed.

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

DATE of Service: July 15, 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 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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