

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0612

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 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 August 4, 2019 (decision # 140909). Claimant filed a timely request for hearing. On July 2, 2021, ALJ Monroe conducted an interpreted hearing,¹ and on July 9, 2021 issued Order No. 21-UI-170130, affirming decision # 140909. On July 26, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's 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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Passion Nails & Spa LLC employed claimant as a nail technician from October 9, 2018 until August 8, 2019.

(2) Claimant lived close to the employer's salon and did not incur expenses in working for the employer.

(3) Claimant was paid using a formula involving 55% of the receipts for the work she did at the employer's salon, which typically amounted to between \$900 and \$1,500 per biweekly pay period. Starting around July 2019, claimant's pay fell to about \$750 to \$800 per pay period.

¹ A hearing on decision # 140909 was originally scheduled for June 21, 2021 with ALJ Ramey. The June 21, 2021 hearing commenced as scheduled. However, due to concerns about the effectiveness of the interpreter who had been assigned to the hearing, the proceedings were adjourned, and the hearing rescheduled for July 2, 2021 with ALJ Monroe. Unless otherwise noted, all references to "the hearing" or citations to the transcript in this decision refer to the July 2, 2021 hearing conducted by ALJ Monroe.

(4) Claimant's young son was typically watched by her aunt while claimant and her husband worked. At some point in 2019, claimant's aunt travelled to Vietnam for three months. At that point, claimant began bringing her son to work with her. Claimant's niece was also available to babysit claimant's son.

(5) On August 8, 2019, the owner of the business expressed to claimant that she should no longer bring her son to work on a daily basis because he was "very mischievous" and "wouldn't let [claimant do] her work." Transcript at 19. Claimant understood this to mean that the employer wished claimant to remain home with her son until claimant's aunt returned from Vietnam. As a result of this understanding, claimant felt that the employer had told her that she was "not needed anymore," and voluntarily quit that day for that reason. Transcript at 12.

(6) For the four weeks after claimant quit working for the employer, claimant's niece babysat her son while claimant began working at other salons on trial bases.

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 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).

At hearing, claimant's husband² testified that the final incident which led claimant to voluntarily quit on August 8, 2019 was the employer having told her that she could no longer bring her son to work and recommended that, since she did not have a babysitter available, she stay home until her aunt—her primary babysitter—returned from Vietnam. Transcript at 12. The employer confirmed in her testimony that the conversation occurred; however, she testified that she did not instruct claimant to stay home until her babysitter had returned from Vietnam, but instead told claimant that she could bring her son to work occasionally, but not on a daily basis. Transcript at 19. A determination as to which version of events is more accurate is unnecessary, however, because the record shows that both parties' versions of events support a finding that claimant quit due to no longer being able to bring her son to work every day.

A situation in which an individual lacks adequate childcare coverage while at work may be considered grave circumstances. Even if claimant's situation was grave, however, the record shows that claimant had the reasonable alternative of asking her niece to babysit for her while claimant continued to work for

² Claimant did not testify directly. Rather, her husband, acting as her representative, testified on her behalf.

the employer. In fact claimant's niece did so while claimant worked for other employers after resigning from this employer. Because claimant did not seek that reasonable alternative prior to quitting, she has not met her burden to show that she quit for a reason of such gravity that she had no reasonable alternative but to leave work.

The record also suggests that claimant may have quit, in part, due to the reduction in pay that she experienced in the month or so prior to quitting. At hearing, claimant's husband testified that this reduction was the result of the owner diverting work from claimant to other employees. Transcript at 8. There is some dispute on the record as to claimant's pay structure. Claimant's husband testified that claimant was not paid by the hour, but rather that her pay was determined as 55% of the receipts for the work she performed, divided by the hourly rate. Transcript at 21. The employer testified that claimant was paid hourly, and that the rate of pay was "around \$15.00 [per hour], but it depends." Transcript at 17. From this testimony, it appears that claimant was paid approximately \$15.00 per hour, but that the amount of *hours* she was paid for was determined by her total receipts. If so, and if claimant's reduction in pay was the result of the employer directing less work towards claimant, then in essence claimant experienced a reduction in hours rather than pay. However, the record shows that claimant did not incur expenses in working for the employer, and therefore the cost of working did not exceed the amount of remuneration she received. Claimant also did not offer evidence to show that continuing to work for the employer substantially interfered with her ability to return to full time work. Therefore, to the extent that claimant quit work due to a reduction in hours, she has not shown that she quit for good cause.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving benefits effective August 4, 2019.

DECISION: Order No. 21-UI-170130 is affirmed.

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

DATE of Service: August 30, 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.

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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 desisyong ito.

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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