

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0639

Reversed & Remanded

PROCEDURAL HISTORY: On November 23, 2020, 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 April 26, 2020 (decision # 131001). Claimant filed a timely request for hearing. On July 15, 2021, ALJ Kaneshiro conducted a hearing, and on July 16, 2020 issued Order No. 21-UI-170539, affirming decision # 131001. On August 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument 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 him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

The parties may offer new information such as written argument or other information that was not offered at hearing or considered in reaching this decision into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Architectural Cost Consultants, LLC employed claimant as an estimator from September 30, 2019 until April 30, 2020. The employer's office was located in Tigard, Oregon.

(2) The employer's business involved estimating construction costs based on blueprints received from clients. Some of the estimates were for existing clients, and so required comparisons to the clients' other projects. To do this, it was necessary for employees to interact with each other in person. Prior to claimant's employment, the employer's owner had concluded that working from home was not feasible

for the type of work performed. Sometimes the owner allowed employees to work from home for appointments or to perform certain tasks, but he did not allow anyone to work from home full time. The owner informed claimant in his employment interview that the position could not be performed working from home on a full-time basis.

(3) When claimant began his employment, his wife and son lived in Bend, Oregon. Claimant rented an apartment in Tigard, Oregon, and worked full time in the employer's Tigard office from approximately October 2019 through January 2020.

(4) Around February 2020, the employer's workload began to decrease due to COVID-19. In March and April 2020, the owner considered the work "a little slow." Transcript at 25. The other estimators in the Tigard office worked approximately 30 hours per week during the slow time although some of the work involved "housekeeping and chores," which the owner assigned to keep them busy. Transcript at 24.

(5) On March 8, 2020, Governor Brown issued Executive Order No. 20-03 declaring a statewide emergency due to the infectious novel coronavirus. Executive Order 20-03 (effective March 8, 2020). Following that declaration, on March 23, 2020, Governor Brown issued Executive Order No. 20-12 directing and ordering, in relevant part, that businesses with offices in Oregon facilitate telework and work-at-home to the extent possible, and that when telework and work-at-home were not available, that such businesses enforce social distancing policies consistent with the directives of [her] Executive Orders and guidance from the Oregon Health Authority. Executive Order 20-12 (effective March 23, 2020).¹

(6) Following the Governor's order, the employer remained open but instituted COVID-19 office protocols designed to keep office employees safe from the spread of the virus. The owner provided personal protective equipment, kept workspaces at least six feet apart, and wiped down and sanitized shared work surfaces.

(7) In March 2020, claimant began spending more time in Bend with his wife and son, and wanted to work from there. Claimant declined opportunities to work in the Tigard office, which reduced his work hours and compensation. The employer allowed claimant to perform some work from Bend, but because claimant was not able to perform all of his work from there, his hours were further reduced.

(8) Around mid-April 2020, without discussing the matter with the employer, claimant gave up his Tigard apartment and "relocated" to Bend. Transcript at 27. Thereafter, when the office manager emailed claimant about some work projects the manager wanted to assign to claimant, claimant responded, "I'm working out of Bend, have on-screen templates, etc." Transcript at 36. When the manager learned from the owner that he had not approved claimant to work full time out of Bend, the manager directed claimant to return to the Tigard office to work.

(9) Shortly thereafter, claimant notified the employer that he would not return to the Tigard office to work for "monetary" reasons based on the reduction in his hours and the cost of rent in Tigard, and for

¹ Executive Order Nos. 20-03 and 20-12 are generally cognizable facts, and we take notice of them for purposes of reaching this decision. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

“personal” reasons based on his desire to spend more time with his family and his belief that he was permitted to work from home pursuant to the Governor’s order. Transcript at 6-7, 26, 32-33. On April 30, 2020 claimant signed an agreement with the employer that stated, in part, that claimant had “voluntarily resigned.” Transcript at 36.

CONCLUSIONS AND REASONS: Order No. 21-UI-170539 is set aside, and this matter remanded for further development of the record.

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.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes, in relevant part, the following:

* * *

(g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor’s directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Order No. 21-UI-170539 concluded that claimant quit work without good cause, reasoning that claimant’s circumstances were not so grave that he had no reasonable alternative but to quit, and that even if he had faced a grave situation, claimant created the gravity of his situation by relocating to Bend, Oregon without the employer’s authorization. Order No. 21-UI-170539 at 3. However, the record is insufficient to determine if claimant had good cause to quit work when he did.

The record does not contain sufficient information to determine if claimant’s decision to quit work for monetary reasons was with good cause. The record fails to show how much the employer was paying claimant to work as an estimator, how much rent claimant was paying in Tigard, and whether he also was incurring housing costs in Bend, and if so, how much. The record also fails to show how many hours and how much income claimant lost due to COVID-19 and because he declined work opportunities in the Tigard office.

Additional inquiry is also necessary to determine if claimant’s decision to quit work for personal reasons was with good cause. Although claimant apparently explained to the employer that he wanted to remain

in Bend to spend more time with his wife and son, the record fails to show whether his wife or son were ill, quarantined, or had special needs or whether claimant's desire to remain in Bend was based only on a desire to improve his relationships. The record also fails to show whether claimant attempted to compromise with the employer by exploring the possibility of dividing his work time between the Tigard office and Bend.

Finally, additional inquiry is necessary to determine if claimant's decision to quit work because he believed that the Governor's order permitted him to work from home was with good cause. The record fails to show whether claimant's belief was accurate and whether claimant quit because the employer asked him to work in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of COVID-19. It also fails to show whether, before he quit, claimant knew that the employer had instituted COVID-19 office protocols designed to keep Tigard office employees safe from the spread of the virus.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant quit work with or without good cause, Order No. 21-UI-170539 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-170539 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 9, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-170539 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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