

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0662

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 4, 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 February 16, 2020 (decision # 113226). Claimant filed a timely request for hearing. On August 6, 2021, ALJ Kaneshiro conducted a hearing, and on August 9, 2021 issued Order No. 21-UI-172124, affirming decision # 113226. On August 16, 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 him 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) Tactical Guardian LLC employed claimant as a sandblasting technician from February 20, 2020 until February 21, 2020.

(2) The job of sandblasting technician involved operating a sandblaster in the employer's sandblasting room using a fully sealed hood with independent airlines pumping air into the hood. The sandblasting technician did not need to wear a respirator or mask while using the booth.

(3) Sandblasting technicians were also occasionally required to wash parts using acetone in the parts preparation room. The parts preparation room was equipped with a mechanical ventilation system approved by the federal Occupational Safety and Health Administration (OSHA) that eliminated the need for a sandblasting technician to wear a respirator, or mask, while cleaning parts with acetone. Sandblasting technicians also had the option of using a powered air-purifying respirator (PAPR), which was a fully enclosed mask with air flowing through it, while performing parts preparation work.

(4) The employer also spray-painted manufactured parts with Cerakote in the Cerakote room. An employee applying the Cerakote finish using the employer's spray-painting process typically did so using a properly fitted half-shield respirator mask or a PAPR mask while in a spray booth while operating a robotic arm. The Cerakote room also was equipped with an OSHA-approved mechanical ventilation system.

(5) Exposure to acetone or Cerakote without OSHA-approved mechanical ventilation, a properly fitted respiratory mask, or a PAPR mask, posed a health and safety risk to exposed individuals.

(6) The employer trained each new employee about standard safety procedures and mask usage as part of their orientation process during the employee's first two days of employment. The employer also sent each new employee to a Providence Health Systems (PHS) testing office to have half-shield respirator masks pressure tested to determine whether that type of mask properly fit the employee by creating an airtight seal. The employer required each employee whose job was to apply a Cerakote finish to parts using the Cerakote spray booth to use a properly fitted half-shield respirator mask or a PAPR mask while doing so.

(7) On February 21, 2020, the employer sent claimant to PHS to have two different sized half-shield respirator masks pressure tested to determine whether a mask properly fit claimant by creating an airtight seal. Both masks failed the pressure test. The nurse who informed claimant about the negative test results told him that the masks were not safe for him to use because the seal was not airtight. At that time, claimant decided that he did not want to risk his health by working for the employer with a mask that was "faulty." Transcript at 6.

(8) After claimant's return to the workplace from PHS at approximately 12:45 p.m., claimant told the employer's human resources (HR) manager that he was quitting because "[h]e could get more overtime at his other job." Transcript at 17. He did not tell the HR manager that he was quitting because of the failed mask tests or because he was concerned about his health. Claimant also spoke with the owner and told him about the failed mask tests. The owner suggested that claimant return to PHS for another test, but claimant declined. Claimant did not ask the owner if could safely perform his job with different masks, if there were alternative safety precautions claimant could use to safely perform his job duties, or if he could perform different job duties.

(9) On February 21, 2020, claimant quit because he did not want to risk his health by working for the employer with a "faulty" mask.

CONCLUSIONS AND REASONS: Claimant 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.

Claimant quit work because after he spoke to the nurse at PHS, he decided that he did not want to risk his health by working for the employer without a properly fitting respiratory mask. However, the record fails to show that claimant faced a grave situation when claimant quit. Claimant relied on a nurse who informed him that the two masks tested had failed the pressure test and that those masks were not safe for him to use. However, the record fails to show that the employer required claimant to perform his duties using the masks that failed the pressure testing. Claimant also testified that he was concerned for his health because he was exposed to some hazardous materials during his first day on the job, specifically acetone when he cleaned some parts in the acetone room, and Cerakote when he brought the cleaned parts into the Cerakote room. Transcript at 48-49. However, the owner testified that the employer had adequate OSHA-approved mechanical ventilation systems in place in both rooms, and that claimant’s health and safety were never at risk. Transcript at 38-42. Claimant also testified that he briefly operated the sandblaster on his first day of work, but he used the station booth. Transcript at 49. Because the station booth consisted of a fully sealed hood with independent airlines pumping air into the hood, claimant was able to perform sandblasting there safely. The record fails to show that claimant’s potential exposures to acetone and Cerakote and the sandblasting he performed on his first two days of work for the employer created a grave situation for him.

Nor did claimant establish that he had no reasonable alternative but to quit when he did. Claimant admitted that he declined the owner’s suggestion to return to PHS for another mask pressure test on February 21, 2020. Transcript at 6. Claimant also did not assert, and the record does not otherwise show, that he inquired about alternatives to wearing the masks that had failed the pressure test when he spoke to the HR manager or the owner on February 21, 2020. Claimant admitted that he told the HR manager that he was quitting “to get more overtime” or “something along those lines,” and did not dispute her assertion that he did not explain that was quitting because of the failed mask tests or because he was concerned about his health. Transcript at 17, 32. The owner testified that claimant never inquired about “other options” when he told the owner that he was quitting, and that the employer would have made any necessary accommodations had claimant done so. Transcript at 41-42. The record also shows that claimant would have had the option of wearing a PAPR mask instead of a half-shield respirator. Accordingly, the record fails to show that claimant pursued reasonable alternatives to quitting when he did.

In written argument, claimant asserted that the employer violated federal regulations by failing to put claimant through “a proper safety training” regarding the relevant hazardous materials and respirators before being asked to work with “acetone, Cerakote and perform sandblasting,” and for that reason, a reasonable and prudent person in claimant’s circumstances would have quit work when claimant did. Written Argument at 1, 3-4. However, the employer’s HR manager testified that the employer’s “normal

process” was to review their handbook, which included their safety training, during the first two days of employment, and that she did not know “if anything was done differently” in claimant’s case. Transcript at 21. Claimant testified that he could not recall if anyone reviewed the employer handbook with him, but also testified, “I don’t think we went through [the employer handbook].” Transcript at 14-15. On this issue, the evidence from the parties is no more than evenly balanced. Claimant argued that the employer should have records of whether they trained claimant or reviewed the handbook with him, and that because the employer did not present evidence that claimant was properly trained, EAB should conclude that the employer did not train claimant before he started work. Written Argument at 3. However, in a quit case, the employer does not have the burden to prove any fact in issue that may be necessary to claimant’s case and making such a finding would require EAB to make an inference not supported by the record. Accordingly, on that issue no finding has been made.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 16, 2020, and until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-172124 is affirmed.

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

DATE of Service: September 23, 2021

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits **for weeks ending September 4, 2021 and prior** as long as you were not eligible for other benefits during that time, and were unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA was an unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic. The program ended on September 4, 2021.

Visit <https://unemployment.oregon.gov> for more information, or to contact the Oregon Employment Department using the “Contact Us” form. You can also call 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.surveymoz.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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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