

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0679

Order No. 21-UI-171894 ~ Reversed
No Disqualification

Order No. 21-UI-171899 ~ Modified
Ineligible Weeks 19-20 through 23-20, Eligible Weeks 24-20 through 48-20

PROCEDURAL HISTORY: On November 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving unemployment insurance benefits effective May 3, 2020 (decision # 125432), and another administrative decision concluding that claimant was not available for work and was therefore ineligible to receive benefits from May 3, 2020 through October 10, 2020 (weeks 19-20 through 41-20) (decision # 30730). Claimant filed a timely request for hearing on decisions # 125432 and 30730. On August 3, 2021, ALJ Amesbury conducted hearings on decisions # 125432 and 30730. On August 5, 2021, ALJ Amesbury issued Order No. 21-UI-171894 affirming decision # 125432, and Order No. 21-UI-171899 modifying decision # 30730 by concluding that claimant was not available for work and did not actively seek work during weeks 19-20 through 23-20 and did not actively seek work during weeks 24-20 through 37-20, and was therefore ineligible to receive benefits for those weeks, but was available for work and actively seeking work from September 13, 2020 through November 28, 2020 (weeks 38-20 through 48-20) and was therefore eligible to receive benefits for those weeks. On August 22, 2021, claimant filed an application for review of Orders No. 21-UI-171894 and 21-UI-171899 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-171894 and 21-UI-171899. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0679 and 2021-EAB-0680).

WRITTEN ARGUMENT: Because claimant's argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019), the argument was not considered by EAB when reaching this decision. OAR 471-041-0080(2)(b).

FINDINGS OF FACTS:¹ (1) Walmart Associates, Inc. employed claimant, last as a fabrics and crafts department manager, from July 15, 2015 to May 3, 2020.

(2) In October 2019, claimant began a full-time college program to earn a veterinary assistant degree. Claimant's plan at the time of her college enrollment was to remain with the employer until she finished the degree program and could pursue an opportunity in her new career field.

(3) Between October 2019 and March 12, 2020, claimant perceived an adverse change in her work environment due to the employer's decision to hire several associates claimant viewed as "absolute[ly] lazy" in their job performance. Audio Record at 24:28. Claimant became increasingly "stressed" over her manager's repeated decision to have claimant work in departments other than her own to pick up the "slack" for these coworkers, which caused claimant to become "backed up" in her own department where she was the only employee. Audio Record at 17:12, 18:00 to 18:17. Claimant believed her manager's actions prevented claimant from doing her job in her own department, and her stress was intensified when the employer would "hail" these coworkers as "better associates" than she was. Audio Record at 24:45. Claimant also became frustrated at perceived managerial favoritism after being told that "no overtime" was available to her, only to learn that the employer allowed other coworkers to work overtime. Audio Record at 16:53.

(4) After claimant unsuccessfully attempted to resolve her concerns about the "unfair treatment" with the employer's human resources section (HR), claimant decided to "[stand] her ground" and address her concerns directly with her manager because she had seen other coworkers take a similar stand without repercussions. Audio Record at 13:33, 16:30. Claimant's manager responded by giving claimant a written "coaching" document and "pressuring" her to sign the coaching document. Audio Record at 16:37 to 16:47. The manager also later gave claimant a written performance evaluation which informed claimant that she "need[ed] improvement with daily tasks in own department," and verbally told claimant she was a "waste of space" and "not an inspiration" during the discussion about the performance evaluation. Audio Record at 19:04 to 19:34, 19:58. Claimant felt "belittled" by the verbal comments and believed that the adverse "coaching" and performance evaluation were in retaliation for raising her workplace concerns. Audio Record at 19:30.

(5) On March 12, 2020, claimant addressed her workplace concerns, including her manager's performance evaluation and comments, with the store manager. Claimant believed that the store manager ignored her and that her concerns "went in one ear and out the other," so she provided him written notice of her intent to leave employment effective March 27, 2021. Audio Record at 21:26.

(6) Between March 12, 2020 and March 27, 2020, the workplace conditions improved for claimant, with her coworkers "being so nice to [her] and . . . letting [her] do her job" in her department. Audio Record at 17:50. Based on the positive workplace changes, claimant decided to remain with the employer beyond March 27, 2020.

(7) From March 27, 2020 to May 3, 2020, claimant's work environment gradually returned to, and then exceeded, the stressful environment that had existed prior to March 12, 2020, with the employer

¹ Transcript citations are to the August 3, 2021 hearing that occurred at 8:15 a.m. Audio record citations are to the August 3, 2021 hearing that occurred at 9:30 a.m.

repeatedly assigning claimant to work in other departments, and claimant falling behind in her own department. Claimant was caring for her “high-risk” father-in-law at the time and believed that the work stress she brought home was adversely affecting his health. Audio Record at 18:23. Feeling like she had “nowhere to turn,” and unable to “take the stress anymore” from being “treated like crap,” claimant left work with the employer on May 3, 2020. Audio Record at 18:13, 22:00, 22:10. Claimant would later learn that her manager and the store manager were “forced out” by the employer after claimant quit. Audio Record at 20:19 to 20:55.

(8) On May 8, 2020, claimant filed an initial claim for regular unemployment insurance benefits. Claimant was unwilling to “juggle school and work,” and therefore imposed restrictions on the days and hours she was available to work. Transcript at 9. Claimant claimed benefits for weeks 19-20 through 48-20, the weeks at issue. The Department did not pay claimant for any of those weeks.

(9) On June 6, 2020, claimant concluded her college studies for her veterinary assistant degree and “was completely done with school.” Transcript at 28.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause. Claimant was not available for work during weeks 19-20 through 23-20, but was available for work during weeks 24-20 through 48-20, and was actively seeking work during all the weeks at issue.

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.

Order No. 21-UI-171894 concluded that claimant voluntarily quit work without good cause because “the matters about which she complained [to the employer], although clearly frustrating, did not amount to a situation of such gravity that any reasonable and prudent person in that situation would necessarily have quit work,” but instead “involved claimant’s disagreements with employer about how employees should be managed and how employee assets should be allocated.” Order No. 21-UI-171894 at 3. Order No. 21-UI-171894 further concluded that claimant failed to demonstrate the reasons she left work were sufficiently grave because she gave two weeks’ notice instead of leaving immediately, because she remained with the employer for a month after her two-week notice period expired, and because her decision to quit was equally motivated “by her unhappiness and her desire for change.” Order No. 21-UI-171894 at 3. However, the record does not support those conclusions.

Claimant quit work with good cause. The record shows that for the first four years of claimant’s employment, her work environment was adequate and she did her job effectively. However, in the months prior to her departure, claimant began to feel increasing stress over her manager’s repeated decision to assign her to work in departments other than her own, pick up the “slack” for “lazy” coworkers. The record shows that although claimant’s efforts improved those other departments, the

employer gave the credit for the improvement to claimant's coworkers, while criticizing claimant for allowing her own department to fall behind. Claimant's stress regarding her inability to complete work in her own department was further magnified by the knowledge that the employer was providing overtime to claimant's coworkers, but denying it to her. Claimant's stress was not just limited to the workplace, but brought home by claimant, which created a home environment that compromised the health of a family member. Claimant attempted to address her concerns, first with HR, and then with her manager; however, the record shows that her manager likely retaliated against claimant by giving her an unprofessional, negative performance review and then verbally telling claimant she a "waste of space," and saying she was uninspiring to her coworkers. When claimant brought her manager's comments during the performance review to the attention of the store manager, the store manager ignored claimant's concerns. In light of these circumstances, claimant faced a situation of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Although claimant had good cause to leave work at that point in light of the gravity of her circumstances, claimant experienced an improvement in her work environment during her two-week notice period and acted as a reasonable and prudent person in the same scenario would by remaining with the employer for an additional period of time. However, when those workplace improvements turned out to be short-lived and actually worsened, and because claimant could not "take the stress anymore" and reasonably believed she had "nowhere [else] to turn," claimant acted as any reasonable person in her circumstances would by leaving the employer at that point. Moreover, claimant had no reasonable alternatives except to quit work given that she had been "belittled" and ignored by management when she previously approached them with her concerns, and she reasonably believed that while taking a leave of absence might temporarily alleviate her stress, she would still "go right back to being treated like crap" upon her return from leave. Audio Record at 28:13. As such, claimant voluntarily left work with good cause, and therefore is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

Available for work. To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

* * *

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time[.]

* * *

OAR 471-030-0036(3) (August 2, 2020 through December 26, 2020; December 8, 2019).

The record evidence shows that after claimant left the employer on May 3, 2020, she filed her initial claim for benefits on May 8, 2020. During this time, claimant made the decision to focus on her schooling due to her inability to “juggle school and work.” As a result, claimant placed restrictions on the days and hours she was willing to work until she completed her coursework on June 9, 2020. These school-based restrictions on the hours and days she was available to work made claimant unavailable to work during this period because they were conditions that substantially reduced her opportunities to return to work at the earliest possible time. As such, claimant was not available for work during weeks 19-20 through 23-20. However, the record shows that because school no longer substantially reduced her opportunities to return to work at the earliest possible time during week 24-20, claimant was available for work during the remaining weeks at issue, weeks 24-20 through 48-20.

Actively Seeking Work. To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed as defined by OAR 471-030-0036(5)(a); ORS 657.155(1)(c). However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020). Paragraph (4) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239>, provides the following:

The federal Families First Coronavirus Response Act permits states to temporarily modify their unemployment insurance laws regarding work search requirements on an emergency basis to respond to the spread of COVID-19 (Section 4102(b)). Because of the vital importance to public health and safety of mitigating the spread of COVID-19, social distancing measures must be maintained. Accordingly, effective the week ending March 28, 2020, notwithstanding OAR 471-030-0036, and unless otherwise notified in writing by the Employment Department, a person will be considered actively seeking work for purposes of ORS 657.155 if they are willing to look for work when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

Relying solely on OAR 471-030-0036(5)(a), Order No. 21-UI-171899 concluded that although the record had demonstrated that claimant had adequately performed the required work search activities during weeks 38-20 through 48-20, she had failed to show that she had conducted at least two work seeking activities involving direct contact with an employer during weeks 19-20 through 37-20, and therefore did not perform the required work search activities during these weeks. However, claimant was entitled to the benefit of the temporary COVID-19 rule’s provisions regarding “actively seeking work,” which required her “to be willing to look for when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect.” As found in Order No. 21-UI-171899, the record shows that claimant met the applicable lower threshold for actively seeking work imposed by the temporary COVID-19 rule during all of the weeks at issue.

In summary, claimant voluntarily left work with good cause and is therefore not disqualified from receiving unemployment insurance benefits based on her work separation from the employer. In addition, claimant was not available for work during weeks 19-20 through 23-20, and therefore ineligible to receive benefits for those weeks, but was available for work during weeks 24-20 through

48-20, and was actively seeking work during all the weeks at issue. Claimant therefore is eligible for benefits for weeks 24-20 through 48-20.

DECISION: Order No. 21-UI-171894 is set aside, as outlined above. Order No. 21-UI-171899 is modified, as outlined above.

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

DATE of Service: September 27, 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: Appeals Board Decision 2021-EAB-0679 reverses an order that denied benefits, and Appeals Board Decision 2021-EAB-0680 modifies an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 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 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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