

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0702

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 15, 2021, 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 14, 2021 based on the work separation (decision # 144717). Claimant filed a timely request for hearing. On August 3, 2021, ALJ Janzen conducted a hearing, and on August 4, 2021 issued Order No. 21-UI-171775, reversing decision # 144717 and concluding that claimant quit work with good cause and was not disqualified from receiving benefits. On August 24, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their 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 the employer's reasonable control prevented them 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).

FINDINGS OF FACT: (1) Daily Classics LLC employed claimant as an auto body and paint preparation technician from November 16, 2020 until February 17, 2021.

(2) The employer's workplace was a garage with separate bays in which the employer's technicians performed their assigned work. The garage did not have a ventilation system. Although each of the bays had a garage door, the garage doors were often closed while technicians performed their work.

(3) When technicians prepared the vehicles for painting, painted the vehicles, or ran the engines of the vehicles they were working on, dust, paint fumes, and exhaust fumes permeated the garage space. Although the employer generally provided N-95 masks for employees to wear to help prevent them from breathing in toxic dust and fumes, such masks sometimes were unavailable and were often ineffective when the air in the garage was heavy with dust, paint and exhaust fumes. Because of the poor air ventilation and ineffective masks, claimant often breathed in the dust, paint fumes and exhaust fumes

while working, which hurt claimant's eyes and caused claimant to have headaches. Claimant experienced such headaches on at least two days of each five-day workweek. Claimant complained to the employer's owner about the poor air ventilation in the garage and the health effects it had on him "on a regular basis." Transcript at 11. The owner's only response to claimant's complaints was, "[T]his is what it is," and he did not offer a plan to resolve the issue. Transcript at 11.

(4) On or about February 9, 2021, claimant was working in the employer's garage when other technicians next to claimant were "revving" the engine on a vehicle for several minutes, which caused the employer's shop to become "foggy" with exhaust fumes. Transcript at 8. None of the garage doors were open, and the poor ventilation in claimant's work area caused him to breathe in the exhaust fumes to the extent that it gave claimant a headache and caused him to have to leave work early.

(5) On February 10, 2021, claimant was working in the employer's garage when other technicians were painting a vehicle near to where claimant worked, which caused paint fumes to permeate the air. Breathing the air irritated claimant's eyes and gave claimant a headache. At that time, claimant sent a text message to the owner that he needed to leave for the day because "[p]ainting in the shop without any ventilation . . . is giving me a headache." Transcript at 7. The owner allowed claimant to go home for the day but did not address the issue of the paint fumes.

(6) After February 10, 2021, claimant experienced anxiety about having to go to work and expose himself to the toxic dust and fumes there. The anxiety caused him to have trouble sleeping at night. Claimant concluded that he should not have to report for work each day wondering if he would need to leave that day to protect his health, and decided that he needed to quit.

(7) On February 17, 2021, claimant quit work with the employer to protect his health because the poor ventilation in the employer's shop regularly resulted in him breathing in toxic dust, paint and exhaust fumes, which hurt his eyes, caused him headaches and anxiety, and otherwise affected his health.

CONCLUSIONS AND REASONS: Claimant quit work with 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 to protect his health. The record supports the order's conclusion that when claimant quit work, his situation was grave. Order No. 21-UI-171775 at 2. The nature of the employer's business caused dust, paint and exhaust fumes to permeate the air in the garage when claimant worked. Claimant testified credibly that the lack of ventilation in the garage caused claimant to experience irritated eyes and headaches, and eventually, anxiety and insomnia. Transcript at 10. Although the owner disputed that the air in the garage was as noxious as claimant described, he admitted that the garage had no ventilation

system, and that claimant sent him the text message on February 10, 2021 stating that paint fumes were causing him a headache. Transcript at 18, 19. The owner also testified that even when a garage bay door was open, some of the exhaust fumes remained in the garage. Transcript at 20. More likely than not, the technicians' work in the garage caused dust, paint fumes, and exhaust fumes to permeate the garage space, which resulted in claimant experiencing the health problems he described.

The record also supports the order's conclusion that claimant had no reasonable alternative to quitting when he did. Order No. 21-UI-171775 at 2. Claimant testified that he regularly spoke to the owner about the poor ventilation in the garage and how the fumes in the garage gave him headaches, but that the owner never acted or offered a plan to resolve the issue. Transcript at 11. The owner initially disputed that claimant ever complained to him about that issue, but later admitted that claimant sent him the February 10, 2021 text message complaining that paint fumes were causing him a headache and that he needed to leave for the day. Transcript at 18-19. Although the owner also asserted that he attempted to avoid having the garage full of exhaust, he did not assert or show that he ever directed employees to have the garage doors open whenever fumes were being generated or instituted a policy that required that the doors were open at such times. Transcript at 24. The record as a whole shows that the owner was aware of the ventilation problem within the garage and knew or should have known the health effects it was creating, but fails to show that he was willing or able to modify the working conditions to eliminate or reduce the dust, paint and exhaust fumes claimant was exposed to when working. Viewed objectively, no reasonable and prudent person in claimant's circumstances would have continued to work for the employer for an additional period of time.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-171775 is affirmed.

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

DATE of Service: October 1, 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

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