

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0715

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 18, 2021, 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 May 9, 2021 (decision # 91453). Claimant filed a timely request for hearing. On August 16, 2021, ALJ Amesbury conducted a hearing and issued Order No. 21-UI-172652, affirming decision # 91453. On September 2, 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).

FINDINGS OF FACT: (1) United Parcel Service, Inc. employed claimant as a package handler from October 2016 until May 11, 2021.

(2) In the months leading up to his resignation, claimant began to receive more write ups from his supervisor than he had in the past. Approximately every other week the supervisor would write claimant up for violating an employer policy or expectation, such as arriving at work late, not properly stacking packages, or putting packages on the wrong truck for delivery. Claimant did the things he was written up for, but felt that his supervisor had been singling him out while other employees in claimant's position did not receive write ups for similar violations. As a result of feeling singled out, claimant became frustrated with the employer.

(3) On May 7, 2021, claimant's supervisor told claimant that two higher-level supervisors wished to speak with him after his shift. When claimant met with those managers they asked him about his

performance and the matters for which he had received write ups. Claimant told them he felt he was being targeted, but one of them told him that he became a focus because of his poor performance. The managers told claimant to “shrug” the write ups off and to work on improving his performance. Transcript at 8. They also told him they would check with claimant's supervisor and find out why he was writing claimant up more than he had done in the past.

(4) On May 10, 2021, claimant was scheduled to work, but he called out sick. Claimant had been told that if he had problems with work he should bring them to the union, so after calling out sick he went to see his union representative regarding the write ups. After talking with the representative, claimant decided to file a grievance, which he completed and submitted. The representative told claimant that the union had a backlog of grievances and that, while they would try to get to his grievance soon, it might be some time before the union could fully address it.

(5) On May 11, 2021, claimant called out sick again. Afterwards, claimant sent his supervisor's manager a text telling him that he was resigning effective immediately. Claimant quit because he felt like he had been singled out for discipline.

(6) Prior to resigning, claimant did not bring his concerns about his supervisor to a higher level of management or the employer's human resources department. Had he brought his concerns to either, they could have investigated the matter and transferred claimant to a different team or shift so that he would have a different supervisor. Prior to quitting, the employer did not tell claimant that he was going to be discharged.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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 voluntarily quit work because he felt that he had been singled out for discipline at work. At hearing, claimant confirmed that he had actually committed the violations—such as tardiness and mishandled packages—that led to the write-ups at work. Transcript at 9–10. Although claimant alleged that the employer disciplined him more than his coworkers for the same offenses, he did not offer corroborating evidence to support that allegation. Even assuming that claimant's testimony in that regard is reliable, claimant has not shown that he quit for a reason of such gravity that he had no reasonable alternative but to quit. This is because, given that claimant admitted that the write-ups were legitimate, and that his job was not in jeopardy, the only negative effects that the write-ups had on claimant were subjective feelings of frustration and being singled out for discipline. Claimant has not met his burden to show that those feelings amounted to a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would leave work.

Further, even if claimant faced a grave situation as a result of the write-ups the employer issued to him, he did not seek reasonable alternatives prior to quitting. Notably, while claimant understood that his union was generally available to him when issues with the employer arose, and while he did actually file a grievance, he quit the following day rather than allowing the grievance process to play out. Additionally, the record shows that claimant could have sought help from either upper management or human resources after his discussions with the higher-level supervisors proved unsuccessful, and that doing so may have addressed claimant's concerns. Because claimant did not seek reasonable alternatives prior to quitting, claimant quit work without good cause.

For the above reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 9, 2021.

DECISION: Order No. 21-UI-172652 is affirmed.

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

DATE of Service: October 7, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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