

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0754

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective August 2, 2020 (decision # 90725). Claimant filed a timely request for hearing. On September 7, 2021, ALJ Lucas conducted a hearing, and on September 9, 2021 issued Order No. 21-UI-174382, affirming decision # 90725. On September 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Gamberettis employed claimant as an executive chef at the employer's Salem and Albany, Oregon locations from September 10, 2019 to August 6, 2020. Claimant's salary was \$50,000 per year.

(2) On April 16, 2020, the employer's owner temporarily laid claimant off due to the COVID-19 pandemic.

(3) In early June 2020, while claimant remained laid off, the employer eliminated the executive chef position, but contacted claimant and offered him the opportunity to return to work in the position of assistant kitchen manager of the employer's Albany, Oregon location. The rate of pay that the employer offered for the position was \$17.00 per hour, plus tips. The employer also guaranteed 40 hours of work for the position, in addition to potential overtime hours. The compensation for the position offered, without any overtime, would have been approximately \$38,400 per year. Claimant declined the employer's offer to return to work and told the owner it was due to "medical" concerns. Transcript at 24-25.

(4) In early July 2020, the owner contacted claimant and renewed her offer that claimant return to work as the assistant kitchen manager at the Albany location, with the same rate of pay that she offered in June 2020. Claimant declined the offer and explained that he "was still working on his health." Transcript at 22. The owner did not terminate claimant's employment, but kept him on layoff status.

(5) On August 6, 2020, the owner contacted claimant and renewed her offer that claimant return to work as the assistant kitchen manager at the Albany location, with the same rate of pay that she offered in June and July 2020. She told claimant that if he did not accept the offer, she would need to hire someone else for the position. Claimant declined the owner's offer, and although he told the owner that, "his doctor still wouldn't release him" to return to work, claimant's physician had never advised him against returning to work. Transcript at 22, 28-30. Claimant did not mention any concerns about the reduction in his rate of pay or the cost of having to commute between the Albany, Oregon restaurant and his Salem, Oregon residence, which he estimated was \$10 per shift. If claimant had mentioned his concern about his transportation costs, the owner would have considered having him work at the Salem, Oregon location instead.

(6) Claimant declined the owner's offer of employment on August 6, 2020 because he was concerned that he would not be able to support his family earning the reduced pay for the assistant manager position and incurring the transportation cost of commuting to Albany for work.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Nature of the Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant could have continued to work for the employer after August 6, 2020 if he had not refused the assistant kitchen manager position at the Albany, Oregon location on that day, which caused the owner to decide to hire someone else. Because claimant could have continued to work for the employer for an additional period of time, but chose not to do so, the work separation was a voluntary leaving that occurred on August 6, 2020.

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.

As a preliminary matter, the record shows that during 2020 claimant made statements to the owner suggesting that concerns about his health contributed to his decision to decline the owner's offer of the assistant kitchen manager position and quit. For example, the record shows that claimant told the owner on August 6, 2020 that his reason for rejecting the owner's offer to return to work was that "his doctor still wouldn't release him" to return to work. However, claimant clarified at hearing that his physician never advised him against returning to work. Transcript at 28-30. When asked at hearing if claimant had

any pre-existing conditions that made him more susceptible to COVID-19 and contributed to his decision to quit, claimant replied that he did not, although he had “general health issues” including “heart issues and things like that,” that his physician had concerns about. Transcript at 28-30. The record also fails to show that claimant had ever contracted COVID-19 or that he was unable to return to work on August 6, 2020 because he was subjected to a mandatory quarantine related to COVID-19. Accordingly, the record shows that did not quit work due to health issues or concerns about the COVID-19 pandemic.

Claimant instead quit working for the employer, in part, based on a reduction in pay if he accepted the demotion from executive chef to assistant kitchen manager at the Albany, Oregon location. A claimant who leaves work due to a reduction in pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market area.” OAR 471-030-0038(5)(d). However, OAR 471-030-0038(5)(d) “applies only when the employer reduces the rate of pay for the position the individual holds. OAR 471-030-0038(5)(d)(A). It does not apply where, as here, “an employee’s earnings are reduced as a result of transfer, demotion or reassignment.” OAR 471-030-0038(5)(d)(A). Claimant’s decision to quit therefore must be analyzed under OAR 471-030-0038(4).

Claimant quit work because he believed the reduction in pay and additional transportation costs would make him unable to support his family. However, the record shows that claimant’s anticipated income as a kitchen manager would have been \$38,400, or more, if he received overtime hours. The record fails to support claimant’s assertion that the reduction in income from \$50,000 per year to \$38,400 per year plus overtime would have made it “not feasible” for him to support his family. Transcript at 5. Moreover, by quitting work, claimant reduced his income to zero and for that reason did not derive any benefit from quitting. See, *Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit from leaving work).

To the extent that the increased transportation costs contributed to claimant’s decision to quit, the record fails to show that a cost of \$10 per shift for transportation while making at least \$38,400 per year created a grave situation for him. Moreover, had claimant addressed that issue with the owner, she “would have made allowances” for that, and even considered having him work at the Salem, Oregon location near where claimant lived. Transcript at 21. By failing to address that issue with the owner, claimant failed to pursue a reasonable alternative to quitting. Accordingly, claimant failed to show that the owner’s offer of employment for the demoted position created a situation of such gravity for him such that he had no reasonable alternative but to quit work when he did.

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits effective August 2, 2020, and until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 21-UI-174382 is affirmed.

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

DATE of Service: October 28, 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 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 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.

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