

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0788

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant not for misconduct within 15 days of a planned voluntary leaving without good cause and that claimant was therefore ineligible to receive unemployment insurance benefits effective March 22, 2020 (decision # 131731). Claimant filed a timely request for hearing. On August 31, 2021, ALJ Lucas conducted a hearing, and on September 2, 2021 issued Order No. 21-UI-173939, affirming decision # 131731. On September 14, 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) Standing Stone Brewing Co. employed claimant as a server at its Ashland, Oregon location from February 2017 to March 26, 2020.

(2) On March 8, 2020, claimant emailed the employer's general manager to provide notice of his intent to quit effective after his final shift on March 26, 2020. Claimant had decided to quit because he wanted to move to Portland to be closer to family and because he liked Portland and wanted to be in a larger location. Claimant "randomly" chose March 26, 2020 to be his final work day because his residential lease in Ashland did not expire until the end of April 2020 and he wanted to have a few weeks "to get [his] stuff together" prior to his lease expiration. Audio Record at 14:44 to 15:06.

(3) On March 16, 2020, claimant worked his last shift for the employer.

(4) On March 17, 2020, the employer temporarily closed their restaurant in response to a mandate from the Oregon Governor requiring restaurants to close for a four-week period as a COVID-19 mitigation measure. The employer temporarily laid off multiple employees including claimant as part of this temporary closure. But for the mandated closure, the employer still planned to schedule claimant for work until his March 26, 2020 effective resignation date and claimant still planned to work until his March 26, 2020 resignation date.

(5) On March 26, 2020, the employer released claimant from their payroll. Claimant remained in Ashland for approximately a month and a half before moving to Portland. No further contact between claimant and the employer occurred during this time.

CONCLUSIONS AND REASONS: Claimant voluntarily 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) (December 23, 2018). “[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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e) as follows:

(A) Domestic violence, as defined in OAR 471-30-0150 [*sic*], which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or a member of the individual’s immediate family; or

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off; or

(C) The need to accompany the individual’s spouse or domestic partner;

(i) To a place from which it is impractical for such individual to commute; and

(ii) Due to a change in location of the spouse’s or domestic partner’s employment.

Claimant has failed to meet his burden to show good cause for his decision to quit work. The record shows that claimant had decided to move to Portland because he liked Portland and wanted to live in a larger location. However, these reasons do not support the conclusion that claimant faced a situation of such gravity at work, that he had no reasonable alternative but to quit on March 26, 2020, particularly

where, as here, the record shows that claimant chose the March 26, 2020 date “randomly” and planned to remain in Ashland for several more weeks after quitting. Under these circumstances, claimant failed to show that he faced a situation of such gravity that a reasonable person of normal sensitivity, exercising ordinary common sense would have no reasonable alternative but to leave the employer when claimant did.

Although the record also shows that claimant’s decision to leave work and move to Portland was also due, in part, to a desire to be closer to family, claimant’s assertion, without more, is insufficient to meet his burden to demonstrate that he had good cause to leave work for “compelling family reasons.” Here, the record provided no evidence that suggested that there was any domestic violence component to claimant’s decision to leave work, nor did the record show that claimant’s decision to move to Portland was based on a need to care for an ill family member or to accompany his spouse or domestic partner for a work-related purpose.

Because the preponderance of the evidence shows that claimant did not face a grave situation prior to leaving work, claimant has failed to meet his burden to show that he quit with good cause and he is therefore disqualified from receiving benefits effective March 22, 2020.

DECISION: Order No. 21-UI-173939 is affirmed.

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

DATE of Service: October 20, 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 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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