

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0811

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 10, 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 30, 2020 (decision # 112724). Claimant filed a timely request for hearing. On September 21, 2021, ALJ Kaneshiro conducted a hearing, and on September 22, 2021 issued Order No. 21-UI-175330, affirming decision # 112724. On October 7, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Breitenbush Hot Springs Retreat employed claimant, most recently as an office worker, from April 2015 until September 5, 2020.

(2) The employer operated a hot springs retreat. The retreat was in a remote location 13 miles from the nearest town and the employer required all of their full-time employees, including claimant, to live on the premises of the retreat. Claimant resided in a house on property that she was not required to share. However, claimant shared a kitchen and bathroom unit with eight other employees.

(3) In March 2020, following the onset of the COVID-19 pandemic, the employer temporarily closed their operations to guests and laid off claimant and their other employees. Claimant had nowhere else to live and continued residing on the employer's premises while she was laid off.

(4) In mid-July 2020, the employer circulated proposed COVID-19 safety protocols to implement in anticipation of reopening. Among other things, the proposed protocols called for cleaning the employer's communal soaking pools via a method that was less stringent than chlorination, which claimant thought was insufficient to kill COVID-19 microbes. On multiple occasions, claimant raised her concerns about the proposed cleaning protocol but the employer did not address claimant's concerns.

(5) On July 27, 2020, the employer implemented the new safety protocols and resumed operations. The protocols required all employees to wear masks while they were in shared spaces. However, some of the employees did not wear masks in the kitchen and bathroom spaces they shared with claimant. When this occurred, claimant asked the other employees to put their masks on, but they often did not comply.

(6) The fact that some of the other employees did not wear masks in the shared kitchen and bathroom spaces caused claimant to become concerned about the risk of exposure to COVID-19, particularly given that the employer was receiving guests again, which meant that COVID-19 could be introduced on property by a guest. Because of her concern that she could be exposed to COVID-19, claimant decided to quit working for the employer.

(7) On August 3, 2020, claimant gave the employer a resignation letter advising of claimant's intent to quit effective September 5, 2020 and then to continue living on the employer's premises for a month thereafter if necessary while she searched for somewhere else to live. Claimant worked through her notice period and quit on September 5, 2020 as planned. On September 7, 2020, claimant stopped living on the employer's premises because she was required to evacuate due to wildfires in the area.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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) (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.

Claimant established good cause for voluntarily leaving work. Claimant quit work because of her concern that she could be exposed to COVID-19 while living on the premises of the employer's retreat. Claimant's situation was grave because she was at a heightened risk of exposure to COVID-19 given that she was required to reside on the employer's property, had nowhere else to live, and shared kitchen and bathroom space with some employees who failed to wear masks. Claimant's situation was grave despite the fact that she continued working for the employer for approximately one month after giving her resignation notice and then intended to remain on the employer's property for up to a month if

necessary after her resignation date to search for somewhere else to live. This is because the record shows that claimant more likely than not needed a relatively lengthy period of time to find a new place to live given the employer's remote location and a reasonable and prudent person would not have made herself homeless by leaving work for the employer without first finding a new place to reside.

With respect to reasonable alternatives, claimant asked the unmasked employees to put their masks on, but they often did not comply, and the record fails to show that the employer was able to ensure that all employees all employees wore while they were in shared living spaces, which included kitchen and bathroom spaces. Similarly, taking a leave of absence from work would not have improved claimant's situation because she resided on the employer's premises and therefore would still have to encounter unmasked employees in the shared kitchen and bathroom while on a leave of absence. For these reasons, claimant had good cause to quit because she established that her living situation was of such gravity that she had no reasonable alternative but to leave work.

Claimant voluntarily left work with good cause and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 21-UI-175330 is set aside, as outlined above.

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

DATE of Service: November 15, 2021

NOTE: This decision reverses 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.

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.

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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.