

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0987

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 8, 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 June 13, 2021 (decision # 95935). Claimant filed a timely request for hearing. On November 8, 2021, ALJ Griffin conducted a hearing, and on November 10, 2021 issued Order No. 21-UI-179495, modifying¹ decision # 95935 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective August 15, 2021. On November 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument when reaching this decision. 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 him 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) Multnomah County School District # 3 employed claimant from 2017 until August 19, 2021. Claimant taught computer science at one of the employer's middle schools.

(2) Claimant developed most of the curriculum he taught, which included coursework in media arts, graphic design, and imaging. The computers available to claimant were purchased in 2013, and were insufficiently powered to teach the curriculum claimant had developed. Claimant modified his curriculum to account for the underpowered computers. Nevertheless, the computers crashed several

¹ The order under review stated that "the administrative decision mailed October 8, 2021 is *affirmed*." Order No. 21-UI-179495 at 4 (emphasis added). However, as the order under review concluded that claimant's effective disqualification date was different than the date found in decision # 95935, the order *modified* the administrative decision.

times per day while claimant was teaching. Claimant spoke to the employer about upgrading the computers in order to accommodate the technical requirements of his curriculum, but the employer told claimant that the school's budget would not allow for such upgrades. The employer's computers would have been sufficient to teach a more basic computer science curriculum.

(3) The classroom in which claimant taught did not permit students to maintain three feet of distance between them, as recommended by the Oregon Department of Education's COVID-19 social distancing guidelines. Claimant became concerned that the lack of social distancing in his classroom would put his students' health at risk, and asked the employer if he could either move his class to a larger computer lab or get new furniture for his current classroom that would allow the students to sit farther apart. The employer denied claimant's requests.

(4) On August 19, 2021, due to his concerns about the underpowered computers and lack of social distancing, claimant sent an email to the employer notifying them that he had decided to resign effective that day.

(5) After claimant resigned, the employer hired another computer science teacher to replace claimant. That teacher taught a more basic computer science course, and did not have issues with the performance of the classroom computers.

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

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes the following:

- (a) A person is unable to work because they are ill with the novel coronavirus;
- (b) A person is unable to work because they have been potentially exposed to the novel coronavirus and have been subjected to a mandatory quarantine period;

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;

(d) A person is unable to work because their employer has ceased or curtailed operations due to the novel coronavirus, including closures or curtailments based on the direction or advice of the Governor or of public health officials;

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine;

(f) A person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus; and

(g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Claimant voluntarily quit work as a result of two separate issues: the underpowered computer equipment that claimant was required to use to teach his coursework, and concerns that his students were at risk of contracting COVID-19 because they could not socially distance in his classroom. Claimant has not shown that either of these concerns constituted good cause for quitting.

To the extent that claimant quit because of the lack of more robust computer equipment, claimant did not quit with good cause. While claimant's desire to teach more sophisticated coursework was understandable, the record nevertheless shows that it was possible for his successor to teach a basic computer science course using the available equipment. The record does not show that claimant could not have developed or taught an alternative curriculum that would not overwhelm the capacity of the school's equipment—only that he preferred not to do so. A reasonable and prudent person in claimant's situation would have accepted the limitations of the resources available to him, either by making further modifications to the curriculum, or else by tolerating the regular crashes that resulted from teaching material that was beyond the technical capabilities of the equipment. Therefore, claimant has not shown that the underpowered computer equipment constituted a situation of such gravity that he had no reasonable alternative but to quit.

To the extent that claimant quit because of his concerns about the lack of social distancing in his classroom, he also has not shown that he quit with good cause. As a preliminary matter, while claimant's decision to quit was based in part about concerns relating to COVID-19, it was not a "COVID-19 related situation" as that term was defined by paragraph (1) of the OED Temporary COVID-19 Rule that was in effect at the time that claimant quit. The Oregon Department of Education's social-distancing guidelines in place for the 2021-2022 school year were advisory,² rather than mandatory. Claimant therefore did

² See, e.g., Oregon Department of Education, "Ready Schools, Safe Learners Resiliency Framework for the 2021-22 School Year," <https://www.oregon.gov/ode/students-and->

not quit due to the employer's having asked claimant to "act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus" per paragraph (1)(g) of the OED Temporary COVID-19 Rule. Nor did claimant show that he quit due to any of the other reasons contemplated under paragraph (1) of that rule. Therefore, claimant did not voluntarily quit for a COVID-19 related reason.

Further, while claimant's concerns about the potential for spread of COVID-19 in his classroom were understandable, he did not show that a reasonable and prudent person, faced with similar circumstances, would leave work. Claimant's testimony suggested that his concern about the lack of social distancing in the classroom was centered on his students' safety rather than his own. He did not, for instance, testify that he was specifically concerned about his own health, or the possibility of contracting COVID-19 at school and passing it to a member of his household. His testimony instead focused on the difficulties in keeping the students sufficiently separated from each other in the classroom. *See* Transcript at 14–17. To the extent that he quit because of his concerns about his students' safety, the record does not show that his students' safety materially improved as a result of claimant's decision to quit. Without a showing that claimant's concerns were actually addressed—or had the potential to be addressed—by his resignation, claimant has not shown that his safety concerns constituted good cause for 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 for leaving work).

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective August 15, 2021.

DECISION: Order No. 21-UI-179495 is affirmed.

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

DATE of Service: December 30, 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.

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 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.

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