

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0989

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 30, 2020, 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 September 27, 2020 (decision # 141041). Claimant filed a timely request for hearing. On August 5, 2021, ALJ Murdock conducted a hearing, and on August 6, 2021 issued Order No. 21-UI-172108, affirming decision # 141041. On August 16, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her 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 her 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) The Resort at Running Y Ranch employed claimant as a housekeeping room inspector from June 30, 2020 until October 2, 2020.

(2) The employer hired claimant to work full time from Friday through Tuesday each week. At hire, the employer promised to pay claimant \$13.00 per hour, which was the hourly rate for a housekeeping inspector. However, when claimant started work, she received \$11.50 per hour, which was the hourly rate for a housekeeper.

(3) Claimant planned to begin a course of college study at the end of September 2020 that required claimant to complete mandatory eight-hour, in-person labs on Saturdays. On September 16, 2020, claimant asked her supervisor if she could have Saturdays off work to complete the required labs. The employer was not willing to allow claimant to have Saturdays off work as a full time housekeeping room inspector. The employer offered claimant a part time housekeeping position, but did not guarantee

that claimant would have all Saturdays off work, or that claimant would be transferred back to the housekeeping room inspector position once she completed her college classes.

(4) Prior to September 18, 2020, claimant told her manager that the employer had been paying her the incorrect hourly pay rate. The manager discovered that there was an error regarding claimant's pay rate in their computer system, and told claimant that the employer would correct the mistake and pay claimant her wages owed.

(5) On September 18, 2020, claimant gave the employer written notice that she planned to quit work on October 2, 2020. The notice stated that claimant planned to quit work because the employer denied claimant's request to have Saturdays off work from October 3, 2020 through December 19, 2020 so that claimant could attend college classes on those days. Exhibit 1.

(6) On September 21, 2020, the employer issued claimant a check for the difference between \$13.00 per hour and \$11.50 per hour for the hours claimant had been paid the incorrect pay rate. Claimant did not believe the additional wages were sufficient to pay all her wages due.

(7) On October 2, 2020, claimant quit work because she believed the employer owed her back wages, and because the employer did not permit her to take Saturdays off work to attend school.

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) (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. Per OAR 471-030-0038(5)(b)(D), leaving work without good cause includes leaving to attend school, unless required by law.

Claimant voluntarily quit work on October 2, 2020 in part because she was attending college and her course of study required her to complete labs all day on Saturdays, which conflicted with her work schedule. To the extent that claimant quit work in order to attend school, Department rule dictates that claimant voluntarily quit work without good cause unless she was required by law to attend school. Claimant bears the burden of proof to show that she quit with good cause. Because the record does not show that claimant was required by law to attend school, claimant has not met that burden, and therefore, to the extent claimant quit work to attend school, she quit work without good cause.

Claimant also quit work, in part, because the employer failed to pay claimant all her wages in a timely manner due to a computer error. The preponderance of the evidence shows the employer failed to pay claimant her full hourly wage for all the hours she worked before September 18, 2020. However, individuals generally have good cause to leave work due to unlawful wage practices only where the practices were likely to continue unresolved. *Accord Marian Estates v. Employment Department*, 158 Or

App 630, 976 P2d 71 (1999) (where employer's past unlawful payroll practices had impacted claimant but were unlikely to reoccur, claimant did not have good cause to leave work). The record does not show that claimant had good cause to quit work due to an ongoing wage issue because the problem that caused the failure to pay her all her wages when due was resolved after claimant complained to her manager on September 18, 2020 about her pay rate. Moreover, although claimant alleged at hearing that the September 21, 2020 paycheck claimant received to correct her prior earnings was insufficient to pay all her wages owed, the employer's manager testified at hearing that the employer had paid claimant all of the wages it had mistakenly failed to pay her prior to September 21, 2020. Audio Record at 19:40 to 19:57. Thus, the preponderance of the evidence does not show that the employer owed claimant additional wages when claimant quit work on October 2, 2020. To the extent claimant left work due to unpaid wages, claimant did not leave work with good cause.

Claimant voluntarily quit work without good cause. She is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Order No. 21-UI-172108 is affirmed.

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

DATE of Service: November 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.

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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 desisyong.

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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