

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1058

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 1, 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 February 14, 2021 (decision # 70851). Claimant filed a timely request for hearing. On November 9, 2021, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on November 17, 2021 issued Order No. 21-UI-179932, affirming decision # 70851. On December 6, 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 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) Sequoia One PEO LLC, a drone manufacturing company, employed claimant as a director of quality from September 28, 2020 through February 19, 2021. The employer hired claimant pursuant to a September 9, 2020 contract providing, among other terms, that claimant would be paid \$135,000 per year, plus benefits, and that claimant's position "may be relocated [from California] to Oregon." Exhibit 1 at 4. The contract also provided that claimant's employment would be "at will," and that his "job duties, title, compensation and benefits . . . may change from time to time." Exhibit 1 at 5.

(2) In late November 2020, claimant relocated from California to Bend, Oregon to continue his employment with the employer. Other than the employer, the city of Bend had a “very limited” presence in the drone manufacturing industry. Transcript at 12.

(3) In early February 2021, the employer transitioned to new management.

(4) On February 5, 2021, as part of the transition to new management, the employer sent claimant an email stating that they believed his qualifications for his current position were “well short of the depth and breadth [the employer] need[ed] at the director level.” Exhibit 1 at 13. The employer further stated that they believed claimant would be an asset to the company in a role “below the director level,” and offered him a job as a quality technician, which would pay \$100,000 per year, and would not provide certain bonuses claimant had previously received. Exhibit 1 at 13. The employer concluded their email by stating that if claimant was not interested in the quality technician position, further discussion would be necessary regarding the possibility of “transition[ing] to another role” with the employer, “or a transition out of [the employer].” Exhibit 1 at 13.

(5) On February 5, 2021, claimant submitted an email response to the employer “declin[ing] a demotion,” and stating that, with respect to the possibility of transitioning to another role, claimant would be willing to remain with the employer in a “Director or related position.” Exhibit 1 at 11. Claimant declined the demotion in part because he was concerned it would convey to future employers an image that he was “a liability versus a value” as an employee and raise questions that claimant would have to address as to why he went from a director of quality to a quality technician position. Transcript at 20-21. Claimant also declined the demotion due to the reduction in pay; despite the demotion, claimant would have continued to work for the employer as a quality technician if the employer would have paid him more than \$100,000 per year.

(6) On February 19, 2021, claimant’s employment ended.

CONCLUSIONS AND REASONS: Claimant 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 testified that the employer constructively discharged him, when on February 5, 2021, they offered claimant a demotion as a “tactic” to eliminate the director of quality position altogether and then refused to offer claimant an “equal position” with the employer. Transcript at 7-8, 17, 20. However, although the employer was unwilling to continue claimant’s employment in an equal or “director level” position, the record shows that the employer remained willing to employ claimant for an additional period of time as a quality technician, and was also willing to discuss the possibility of a different role as long as it was below the director level. The record further shows that claimant could have continued to work for the employer for an additional period of time, but was unwilling to do so. As such, the work separation was a voluntary leaving.

Voluntary quit. 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). “[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 an initial matter, although claimant left the employer based, in part, on his concerns about the impact on his prospects for future employment in the industry if he accepted the demotion, the record shows that claimant would have remained with the employer in the quality technician position if the employer had been willing to pay him more than \$100,000 per year to perform the role. Thus, the record shows that claimant’s primary reason for leaving work was the potential for a reduction in his pay. In applying OAR 471-030-0038(4), an individual 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. The median rate of pay in the individual’s labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.” 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. It does not apply when an employee’s earnings are reduced because of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). Here, because any reduction in pay would have been the result of claimant’s demotion to quality technician (had he elected to accept the demotion), OAR 471-030-0038(5)(d) does not apply.

Claimant left work without good cause. The record shows that in addition to the reduction in pay he would have received by accepting the demotion, claimant’s additional reasons for leaving the employer included his view that the employer was demoting him as a means to eliminate the director of quality position altogether, and his concerns about the impact of a demotion on his ability to obtain work with future employers in the drone industry. However, none of these reasons for leaving work were reasons of such gravity that claimant had no alternative but to leave work. To the extent claimant was concerned about future employment in the industry, the record does not show that the purported negative effects of having to explain a demotion to a future employer in a job interview would, objectively speaking, be worse than having to explain a period of unemployment to the same employer. Furthermore, claimant’s testimony undercut this very argument to the extent he explained that the employer’s “tactics” were “commonly used in this industry.” Transcript at 16. Based on this testimony, it is reasonable to conclude that future employers would understand the circumstances surrounding claimant’s demotion and not hold the demotion against him in any future employment decision. Finally, the record shows that claimant derived no benefit from quitting work and reducing his income to zero. *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).

To the extent claimant asserted that he left work because quality technician work was not “suitable,” claimant did not meet his burden to show that the work was not suitable. For purposes of applying OAR

471-030-0038(4), leaving work without good cause includes “[l]eaving *suitable* work to seek other work.” OAR 471-030-0038(5)(b)(A). (Emphasis added). Under ORS 657.190, factors to consider in determining whether any work is suitable include the “prior training, experience and prior earnings of the individual . . . and prospects for securing local work in the customary occupation and the distance of the available work from the residence of the individual.” Claimant testified generally that the \$100,000 per year pay he was offered for the quality technician position was not suitable for the Bend locality. Transcript at 15. However, when asked at hearing what evidence he could provide to support this statement, claimant stated that he did not have other evidence. Transcript at 15. Furthermore, the record shows that although the quality technician position would have been a demotion, it still would have allowed claimant to remain in his customary industry, and opportunities in Bend to work in claimant’s customary industry were otherwise limited. As such, the preponderance of the evidence fails to show that quality technician work would not have been suitable for claimant. To the extent claimant left suitable work to seek other work, claimant left work without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-179932 is affirmed.

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

DATE of Service: January 13, 2022

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 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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