

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1068

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving unemployment insurance benefits effective September 5, 2021 (decision # 81420). Claimant filed a timely request for hearing. On November 17 and December 2, 2021, ALJ Ramey conducted an interpreted hearing in Vietnamese, and on December 3, 2021 issued Order No. 21-UI-181066, affirming decision # 81420. On December 15, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Cascade Windows employed claimant as a production worker from June 15, 2020 until September 8, 2021.

(2) The employer assigned claimant to work on a glass-cutting machine that required two people to operate. However, claimant was the only person assigned to work on the machine. Claimant's shifts were 11 hours long. As a result, the work required of claimant was physically demanding, often left claimant feeling tired and sore, and caused him to experience stress. Claimant's fatigue was such that he once nearly dropped a pane of glass on his head. Claimant's supervisor did not allow claimant's production unit to take breaks.

(3) Claimant attempted to speak to management about the impact that the job was having on his health. However, claimant had limited English proficiency, which required someone to interpret for him when speaking to management. On two occasions, claimant's coworker interpreted for claimant when speaking to management, but the coworker was concerned that he might lose his job if he continued to help claimant, and claimant did not want to get the coworker in trouble. Claimant's attempts at addressing the problem with management via the coworker did not resolve the problem. The employer told claimant that they would hire another person to work on the machine with claimant, but claimant continued to work on the machine by himself for another two months thereafter, and the new employees that the employer hired were assigned to work in other departments. Claimant did not attempt to address the problem with the employer's human resources department.

(4) On or around September 3, 2021, claimant's supervisor asked claimant to report to work on a Saturday. Claimant told his supervisor that he was "so tired at that time," and that he "might come or might not" due to his health. November 17, 2021 Transcript at 12. In response, claimant's supervisor notified him that he would be disciplined if he did not report to work. Claimant did not work on the Saturday as his supervisor had directed him to do.

(5) On September 8, 2021, claimant voluntarily quit work because of the impact that the job had had on his health. Claimant did not attempt to transfer to any other positions within the company prior to quitting.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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) (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.

Claimant voluntarily quit work because of the impact that the fatigue caused by his work had on his health. The order under review concluded that this did not constitute a reason of such gravity that claimant had no reasonable alternative but to quit because claimant could have pursued reasonable alternatives—such as attempting to talk human resources or someone else above claimant's supervisor, transferring to another position within the company, taking a leave of absence, or seeking medical treatment—prior to quitting. Order No. 21-UI-181066 at 3. The record does not support that conclusion.

Claimant's concerns about continuing to perform a physically demanding, 2-person job alone for 11 hour shifts without breaks, which left him so fatigued that he was at risk of injuring himself, constituted a grave reason for quitting. Further, the record shows that claimant had no reasonable alternative but to quit. Some of the alternatives proposed in the order under review—such as discussing his concerns with upper management or human resources, or discussing a transfer to another position within the company—might have been reasonable alternatives for a person who was proficient in English. However, the same cannot be said for a person such as claimant who was not, as a result of the language barrier, able to directly communicate with his superiors.

At hearing, the employer's human resources director testified that even if claimant's coworker had become unwilling to interpret for the benefit of claimant, the employer "definitely could have" found another employee to interpret on behalf of claimant. Transcript at 18. The human resources director did not state, however, that any such employee performing this interpretation function would have actually been competent to perform this interpretation role or would have been actually willing to interpret for claimant, and they did not otherwise indicate that they would have paid for professional interpretation services to ensure that they properly understood claimant's concerns. Claimant's attempts to address the safety problem via his coworker, who initially *did* interpret for him—were not successful, and his

coworker later became unwilling to interpret for claimant any further. Additionally, the employer had already acknowledged claimant's concerns and agreed to remedy them by assigning a new hire to work with him, but then failed to actually assign someone as they had agreed. On balance, the record therefore does not support the conclusion that a reasonable and prudent person in claimant's situation would have requested that the other employee interpret during interactions with management or human resources. Instead, a reasonable and prudent person in claimant's circumstances would conclude that further efforts to communicate with the employer via an interpreter would be futile. Likewise, a reasonable and prudent person would not continue to work in an unsafe situation without an effective means of communicating to their employer that the situation was unsafe.

Further, the record does not show that either seeking medical treatment or a leave of absence would have been reasonable alternatives to quitting. The cause of claimant's fatigue was the working conditions imposed upon him by the employer. Based on the evidence in the record, there is no basis for concluding that claimant's concerns would have been meaningfully addressed by pursuing either of those options. Therefore, claimant voluntarily quit work for a reason of such gravity that he had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 21-UI-181066 is set aside, as outlined above.

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

DATE of Service: January 25, 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.

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.

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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 ito.

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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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.