

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1075

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective May 30, 2021 (decision # 143043). Claimant filed a timely request for hearing. On December 1, 2021, ALJ Moskowitz conducted a hearing, at which the employer failed to appear, and on December 7, 2021 issued Order No. 21-UI-181234, affirming decision # 143043. On December 13, 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) New Oregon Motel employed claimant as a housekeeper from April 11, 2021 until June 1, 2021.

(2) The employer was short-staffed and scheduled claimant to work on 23 consecutive days, which upset claimant. The day after claimant returned to work after a day off, she found evidence in a trashcan that a patron of the motel had left a \$25 tip in a room that she cleaned the day before her day off. Claimant was upset because she did not receive the tip. Despite her dissatisfaction, claimant did not complain to the employer about those two issues.

(3) Claimant took care of her disabled mother, who was on dialysis, on a daily basis. Claimant was concerned about contracting COVID-19 while working at the employer's motel and passing it on to her mother. Although the employer had a policy requiring employees and guests to wear facemasks, claimant observed that coworkers, supervisors, and guests sometimes did not wear facemasks properly, or at all. She also observed that coworkers who did not follow the employer's

facemask policy sometimes touched or moved items on her housekeeping cart without wearing gloves, or entered rooms where she was cleaning. Claimant believed both of these practices increased her chances of contracting COVID-19 at work. Claimant strictly followed the employer's facemask policy, wore gloves, and tried to keep a safe distance away from others.

(4) In May 2021, claimant complained to her supervisor about the employer's lax enforcement of their facemask policy. Shortly thereafter, during a staff meeting, the employer told employees that they were required to wear facemasks. Despite that directive, after the meeting, employees continued to violate the policy and the employer did not take further action to enforce it.

(5) On June 1, 2021, claimant took her mother to a doctor appointment. At the appointment, her mother's physician told claimant that due to her mother's poor health and medical condition, her mother was at a higher risk for contracting COVID-19 if she was exposed to it. Claimant decided to quit work because she was concerned about contracting COVID-19 at work and subsequently infecting her mother. Claimant believed she was at risk of contracting COVID-19 at work because her coworkers sometimes failed to wear masks or take other precautions to limit the spread of COVID-19 at work. Without returning to work that day, discussing with the employer what she had learned from her mother's doctor, or requesting additional safety measures or stricter enforcement of the employer's COVID-19 related policy, claimant quit.

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/ORSOSWeb-Drawer/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:

* * *

(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;

* * *

(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[.]

* * *

Claimant did not establish that she quit work for a “COVID-19 related situation,” as that term is defined by the OED Temporary COVID-19 Rule. Claimant did not quit because a health care provider advised her to self-quarantine due to possible risk of exposure to, or the spread of, the novel coronavirus. While claimant testified that her mother was at higher risk from contracting COVID-19 due to her health condition, the record does not show that at the time she quit, claimant was unable to work because she had to care for her mother, or that her mother was suffering from the novel coronavirus or was subject to a mandatory quarantine. Audio Record at 15:10 to 15:50.

Claimant also failed to establish that she quit work for good cause under OAR 471-030-0038(4). Although claimant’s situation at work may have been grave due to the employer’s failure to strictly enforce its COVID-19-related mask policy, claimant failed to pursue reasonable alternatives to quitting. Claimant had the reasonable alternative of returning to work after her mother’s June 1, 2021 medical appointment and discussing with the employer her heightened concern for her mother’s health based on what she had learned from her mother’s doctor. Claimant could have requested that the employer implement additional safety measures, or enforce the safety rules already in place. The record fails to show that pursuing those alternatives would have been futile given that shortly after claimant complained to her supervisor in May 2021, the employer held a staff meeting during which the employer told employees that they were required to wear their facemasks.

To the extent claimant quit work due to dissatisfaction with her working conditions, claimant did not show she quit work for good cause. Being scheduled to work on 23 consecutive days and not receiving a \$25 tip that she believed was hers did not pose a situation of such gravity that she had no reasonable alternative but to quit. Claimant could have requested that the employer implement a more reasonable work schedule for her and investigate who may have taken the tip that claimant believed was hers. The record fails to show that pursuing those reasonable alternatives would have been futile given the employer’s prior response to claimant’s complaint about coworkers not wearing their masks.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 30, 2021 based on the work separation.

DECISION: Order No. 21-UI-181234 is affirmed.

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

DATE of Service: January 20, 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.surveymoz.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.

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.