

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1088

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 29, 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 19, 2021 (decision # 103238). Claimant filed a timely request for hearing. On December 13, 2021, ALJ Amesbury conducted a hearing, at which the employer failed to appear, and issued Order No. 21-UI-181722, modifying decision # 103238 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective September 12, 2021. On December 16, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider Claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Meduri Farms Inc. employed claimant, last as a forklift driver, from approximately August 2021 to September 17, 2021. The employer hired claimant, who was 84 years old, to be a truck driver, but prior to his start date asked claimant to work instead as a forklift driver, and claimant agreed to "give it a try" despite no prior forklift experience. Transcript at 18. The employer expected their forklift drivers to be cross-trained in three different forklift jobs and therefore rotated their forklift drivers between "receiving" forklift work, "feeding" forklift work, and a third forklift job that involved moving pallets around the workplace. Transcript at 11.

(2) From August 2021 to early September 2021, claimant conducted "receiving" forklift work, which he found to be "easy" after an initial one-week period of time that it took him to "[catch] on". Transcript at 18.

(3) In mid-September 2021, the employer asked claimant to transition to "feeding" forklift work, and claimant agreed to try the position. During his two and a half days on the position, Claimant found "feeding" forklift work to be "extremely fast" and he struggled to keep up with the pace. Transcript at 9.

Claimant was “[written] up” by the employer for several incidents including leaving the forklift forks in an unsafe position and dropping plastic bins off the forklift while he drove it. Transcript at 9.

(4) On September 17, 2021, the employer informed claimant that he would be suspended for three days without pay due to the several incidents that had occurred. Claimant believed he could not keep up with the “feeding” forklift work pace and was concerned that his poor reaction capabilities might cause injury to a coworker if he continued to perform the work. Claimant also believed that because he was incapable of doing the “feeding” forklift work that the employer expected him to do as part of their forklift rotational requirement, he would not be able to keep his forklift position, and “figured that was it for [him].” Transcript at 16. Claimant decided to quit work that day. Claimant did not tell any of his coworkers he was quitting and he did not address with the employer the possibility of returning to the “receiving” forklift position because he believed that the employer would turn him down to the rotational nature of the forklift position.

(5) On September 21, 2021, the employer called claimant to ask if he was coming back to work. Claimant told the employer he was not coming back to the job due to the stress in the “feeding” forklift position.

CONCLUSIONS AND REASON: 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.

Claimant quit work without good cause. The record shows that claimant left work because he believed he could not keep up with the pace of “feeding” forklift work the employer expected him to perform, and had at least two safety-related incidents which, when coupled with claimant’s fears about his slow reaction capabilities, convinced claimant that continuing to work as a “feeding” forklift driver might result in someone getting injured. Under these circumstances, the record shows that a reasonable and prudent person of normal sensitivity would have believed that continuing to work as a “feeding” forklift driver constituted a grave situation due to the risk of serious injury to coworkers.

However, claimant must also demonstrate that he had no reasonable alternative to quitting work and, in this regard, claimant did not meet his burden. The record shows that prior to quitting, claimant chose not to approach the employer about the possibility of transferring back to “receiving” forklift work because he believed the employer would refuse such a transfer due to their expectation that forklift drivers be competent in performing all three of the forklift positions. However, the preponderance of the evidence suggests that had claimant raised the possibility of returning to the “receiving” forklift position prior to quitting, the employer may have allowed him to do so. Here, although claimant had difficulties with the “feeding” forklift position, it can be inferred from the employer’s inquiry during their September 21,

2021 call with claimant that they did not share the same level of concern over claimant's mistakes, expected him to return to the job, and were willing to continue employing him as a "feeding" forklift driver. In this regard, the employer may well have believed that claimant needed the same one-week period to adjust to the "feeding" forklift position that he needed for the "receiving" forklift position.

More importantly, however, the record shows that the employer had only asked claimant to "try" performing the "feeding" forklift work (as they had done with the "receiving" forklift work), suggesting that they recognized that claimant lacked experience driving a forklift and may not have been successful in doing so. Transcript at 10. This evidence, coupled with the evidence showing that the employer was willing to place the inexperienced claimant in the forklift driver position in the first place, leads to an inference that the employer would have, more likely than not, been open to transferring claimant back to the "receiving" forklift position where he had been successful, rather than losing him as an employee altogether. Because the record fails to show that approaching the employer to address this alternative likely would have been futile, claimant left work without good cause, and is therefore disqualified from receiving unemployment insurance benefits effective September 12, 2021.

DECISION: Order No. 21-UI-181722 is affirmed.

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.

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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 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 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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