

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0092

Affirmed ~ No Disqualification
Confirmada ~ No Descalificación

PROCEDURAL HISTORY: On January 25, 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 June 21, 2020 (decision # 141048). Claimant filed a timely request for hearing. On December 8, 2021, ALJ Ramey conducted a hearing that was continued to December 22, 2021, when the hearing was interpreted in Spanish. On December 29, 2021, ALJ Ramey issued Order No. 21-UI-182931, reversing decision # 141048 and concluding that claimant quit with good cause and was not disqualified from receiving benefits. On January 7, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Arcadia Environmental Inc. employed claimant from October 2016 until July 24, 2020 as an asbestos abatement supervisor.

(2) In approximately 2019, claimant was injured while working for the employer and initiated a worker's compensation claim. At least in part due to the work-related injury, claimant had permanently disabling back conditions, including a soft tissue problem and arthritis. Due to these conditions, claimant's medical provider restricted claimant to doing only light duty work, and from lifting, pushing, or pulling more than 30 pounds at work.

(3) During 2020, after his injury, claimant was dissatisfied with the number of hours the employer gave him to work. Claimant observed that other employees were often given work while he was sent home without work. Claimant was also dissatisfied with the medical coverage the worker's compensation provider approved for his back conditions. Claimant's back conditions required treatment that the worker's compensation insurance provider refused to cover, and claimant had to use his personal

medical insurance for some of his treatment. For these reasons, claimant filed a lawsuit against the worker's compensation provider. Claimant felt the lawsuit or a settlement agreement would compensate him for his losses associated with his back injury.

(4) From June 2020 until July 24, 2020, the employer, claimant, and the worker's compensation insurance provider were engaged in settlement negotiations regarding claimant's lawsuit.

(5) On June 26, 2020, claimant last performed services for the employer. Although claimant did not report to work after June 26, 2020, the employer did not discipline claimant for failing to report to work, and was willing to allow claimant to remain employed until July 24, 2020. Claimant was willing to continue working for the employer after June 26, 2020, but believed that the employer had no work available for him.

(6) On July 24, 2020, claimant (and his legal counsel), the employer, and the worker's compensation insurance provider engaged in an arbitration of claimant's claim. At that time, pursuant to advice from his attorney, claimant entered into a settlement agreement with the employer and the insurance provider. One of the terms of the agreement was that claimant's employment relationship with the employer would end on July 24, 2020.

(7) On July 24, 2020, claimant's employment relationship with the employer ended.

CONCLUSIONS AND REASONS: Claimant quit work with 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).

Although claimant did not report to work after June 26, 2020, the record shows that claimant was willing to continue working, but did not report to work because he believed that the employer had no work for him to perform. Likewise, although claimant did not report to work, the employer did not discipline claimant or otherwise act to end the employment relationship. It was not until the time of the settlement agreement, on July 24, 2020, that claimant acted to end the employment relationship by accepting the employer's settlement term requiring him to leave work as part of the agreement. Because claimant could have refused to accept the settlement agreement and continued the employment relationship for an additional period of time, the work separation was a voluntary leaving, and not a discharge.

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) (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). Claimant had soft tissue damage and arthritis in his back, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

At the time claimant left work, he had been experiencing a back injury for approximately a year, was not satisfied with the number of hours of work he received from the employer, and had a pending lawsuit because the worker’s compensation insurance provider would not cover treatment for all of his back conditions. Claimant felt a settlement agreement would compensate him for his losses associated with his back injury. Claimant’s need to settle his claim was therefore a grave situation. However, leaving work with the employer was a condition of the settlement.

Claimant’s alternatives at the time he quit work were to either continue working fewer hours than he desired indefinitely, without satisfactory compensation or treatment for his injury, or to enter into a settlement agreement upon the advice of his attorney that would resolve his lawsuit. Continuing to work for an indefinite period of time while injured and with a pending worker’s compensation claim was not a reasonable alternative. Under the circumstances described at the hearing, no reasonable and prudent person with permanent back impairments would have continued to work rather than quitting work to accept a settlement that would allow them to obtain treatment and compensation for their injuries.

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

DECISION: Order No. 21-UI-182931 is affirmed. *La Orden de la Audiencia 21-UI-182931 queda confirmada.*

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

DATE of Service: February 17, 2022 / 17 de febrero de 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.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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