

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0107

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 16, 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 December 15, 2019 (decision # 154940). Claimant filed a timely request for hearing. On December 29, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on December 30, 2021 issued Order No. 21-UI-183009, affirming decision # 154940. On January 12, 2022, 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) Nectar employed claimant as a part-time bud tender, cashier, and sales associate from late 2018 to December 15, 2019. Claimant worked approximately 20 hours per week and was paid \$15.00 per hour.

(2) While working for the employer, claimant attended school full-time at Mt. Hood Community College (MHCC).

(3) In November 2019, claimant experienced severe pain in his neck. The pain caused claimant significant discomfort and difficulty in both swallowing and talking. Claimant's neck condition interfered with his ability to perform his job because claimant was required to speak to customers on a regular basis. Claimant did not seek reassignment to another position because the employer did not have any positions that did not require speaking to customers.

(4) In mid-November 2019, claimant sought medical attention for his neck pain and his health care providers recommended surgery to remove a mass in claimant's neck as soon as a surgeon and hospital space became available.

(5) On November 19, 2019, claimant received an offer of work as a tutor from MHCC beginning at the start of the winter term on January 6, 2020. The offer was for at least sixteen hours of work per week at an hourly wage rate of \$16.00 per hour. The work was expected to continue for at least one and one-half years. The offer contained several contingencies, including a requirement that claimant pass a background check, be enrolled as a student at MHCC with at least six credits, and that he maintain a 3.0 cumulative grade point average while at MHCC. Claimant passed the background check. Based on his attendance at MHCC during 2018 and 2019 and his 4.0 cumulative grade point average, he fulfilled the minimum credits and grade point contingencies by the end of November 2019. Claimant informed MHCC of his neck condition, his difficulty with verbal communication and his need for surgery. MHCC agreed to give claimant work he could perform, such as creating lesson plans, until he recovered from his surgery to remove the mass in his neck. Claimant accepted the offer of work from MHCC.

(6) On December 1, 2019, claimant notified the employer that he was quitting work, and that his last day of work would be December 15, 2019. Claimant chose December 15, 2019 as his last day of work because he knew that he would be starting his new job in early January 2020, his neck condition made it difficult to perform his job with the employer, the employer had no positions that did not involve customer contact that he could perform, and he expected to be scheduled for surgery soon.

(7) The employer likely would have granted claimant an unpaid leave of absence until he started his new job had he requested one. Claimant did not request a leave of absence because he knew that he was "actually leaving" for another job on January 6, 2020, and felt it "didn't make sense" for him to request one under those circumstances. Transcript at 7-8, 14.

(8) On December 15, 2019, claimant quit work to accept an offer of other work from MHCC.

(9) Claimant's weekly benefit amount was \$127.

CONCLUSIONS AND REASONS: Claimant 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.

A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to

continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.” OAR 471-030-0038(5)(a).

On December 15, 2019, claimant quit work to accept the offer of other work from MHCC. The record shows that the offer of other work accepted by claimant was definite, reasonably expected to continue, and paid an amount greater than claimant’s weekly benefit amount of \$127.00 (16 hours x \$16.00 per hour = \$256.00 per week). However, the order under review concluded that claimant quit work without good cause because the offered work did not begin in the shortest length of time reasonable under the circumstances. Order No. 21-UI-183009 at 3-4. The order reasoned that claimant could have continued working for the employer until January 6, 2020 by requesting a leave of absence or an accommodation, but chose not to do so. Order No. 21-UI-183009 at 4. However, the record shows that the offered work was to begin in the shortest length of time as can be deemed reasonable under claimant’s individual circumstances.

When claimant notified the employer on December 1, 2019 that he was quitting, he selected December 15, 2019 as his last day. Although claimant testified that he believed the employer would have granted him a leave of absence had he requested one, he explained that he did not request one because he knew that he was “actually leaving” for another job on January 6, 2020, and felt it “didn’t make sense” for him to request one under those circumstances. Had claimant requested and been granted a leave of absence it would only have lasted until January 6, 2020, when he began his new job at MHCC. Moreover, as claimant had only been a part-time employee while working for the employer, any such leave of absence likely would have been unpaid. Requesting an accommodation from the employer for his neck condition would more likely than not have been futile because the record shows that the employer did not have any positions available that did not require speaking to customers, which was difficult for claimant due to his neck condition.

Viewed objectively, a reasonable and prudent person in claimant’s individual circumstances would have quit work on December 15, 2019, and not taken an unpaid leave of absence. If claimant had requested an unpaid leave of absence until January 6, 2020, rather than quit when he did, the time between paid work with his former employer and the paid work with his new employer would have been the same, which therefore was the shortest length of time as can be deemed reasonable under claimant’s individual circumstances.

In sum, because claimant quit to accept an offer of work that was definite, and that the work was reasonably expected to continue, paid an amount greater than claimant’s weekly benefit amount, and was scheduled to begin in the shortest length of time reasonable under claimant’s individual circumstances, claimant quit work with good cause under OAR 471-030-0038(5)(a). Claimant therefore is not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

DECISION: Order No. 21-UI-183009 is set aside, as outlined above.

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

DATE of Service: February 24, 2022

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.

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 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 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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