

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0172

Reversed
Disqualification

PROCEDURAL HISTORY: On December 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 120625). The employer filed a timely request for hearing. On January 13, 2022, ALJ Lucas conducted a hearing at which claimant failed to appear, and on January 20, 2022 issued Order No. 22-UI-184489, affirming decision # 120625. On January 28, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their 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 the employer's reasonable control prevented them 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) Oasis Outsourcing Admin II Inc. employed claimant as a housekeeper and maintenance person from May 16, 2021 to October 11, 2021. Claimant lived at the worksite and was aware that the employer maintained an employee work schedule at the worksite.

(2) The employer maintained an attendance policy that required their employees to be at work during all scheduled workdays and work hours and to report to work on time. When an employee was unable to report to work for a scheduled workday, the employer expected the employee to contact the employer no later than two hours prior to the start of the scheduled shift so that the employer could arrange coverage. The employer considered an unexcused absence from work without advance notice to the employer to constitute "Immediate Grounds for Dismissal." Exhibit 1 at 1. Claimant was provided a copy of the employee handbook containing the no call/no show policy at the time of their hire.

(3) July 12, 2021, the employer spoke with claimant and reiterated the terms of the employer's attendance policy with claimant after claimant failed to show up for work.

(4) On August 20, 2021, the employer spoke with claimant and reiterated the terms of the employer's attendance policy with claimant after claimant failed to show up for work.

(5) On September 27, 2021, claimant worked their last day for the employer.

(6) On September 30, 2021, October 1 through October 4, 2021, and October 7 through October 10, 2021, claimant failed to report for work despite having been scheduled to work on each of these days. Claimant did not provide advance notice on any of these days that they would not report for work. Claimant's supervisor attempted to call claimant on three occasions between September 30, 2021 and October 10, 2021 to see if claimant would be coming to work, but claimant did not answer their phone or return the supervisor's call. The employer's front desk staff also tried to call claimant during this period, but claimant did not answer the call or respond to the message the front desk staff left.

(7) On October 11, 2021, claimant again failed to report for scheduled work and did not provide the employer advance notice that they would be absent from work. Because claimant had missed their last ten workdays and had neither contacted the employer nor responded to any of the employer's attempts to contact them, the employer concluded that claimant had voluntarily resigned their position and terminated their employment based on job abandonment.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without 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).

Although the record shows that a single no call/no show constituted "Grounds for Immediate Dismissal" under the employer's policy, the employer went to significant lengths to try to make contact with claimant between September 30, 2021 and October 11, 2021, to determine if they would be coming to work. Exhibit 1 at 1. Based on these efforts to make contact with claimant despite their repeated violations of the no call/no show policy, it can be inferred from the record that continuing work would have been available to claimant after September 30, 2021, had claimant decided not to quit, because claimant had, at that point, already severed the employment relationship. As such, the record shows that claimant voluntarily left work because they could have continued working for the employer for an additional period of time but chose not to do so.

While the record shows that on October 11, 2021 the employer "terminated" claimant's employment based on the determination that claimant had abandoned their job, the employer's administrative classification of "job abandonment" does not change the conclusion that the nature of claimant's work separation was a voluntary leaving. Claimant's failure to report to work over the course of ten days beginning on September 30, 2021, and their failure to make contact with the employer during this time period, is most reasonably interpreted as the manifestation of an intention by claimant to end the

employment relationship. Because claimant's actions in this regard were the first actions by either party to demonstrate an intent to end the employment relationship, claimant's work separation was a voluntarily leaving.

Further, notwithstanding the employer's later "termination" of claimant for purposes of removing claimant from their books, the first indication in the record of claimant's intent not to return to work was when they failed to show up for work on September 30, 2021. Accordingly, the record shows that, more likely than not, claimant voluntarily quit work on September 30, 2021.

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). 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.

The record supports the conclusion that claimant voluntarily quit work as of September 30, 2021, as evidenced by their failure to report to work that day or any of the following ten consecutive work shifts, and their failure to make any contact with the employer during this period of time. Claimant did not appear at the hearing to explain why they stopped reporting for work, and the record otherwise contains no evidence suggesting that claimant faced a situation of such gravity that they had no reasonable alternative but to leave work when they did. For these reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective September 26, 2021.

DECISION: Order No. 22-UI-184489 is set aside, as outlined above.

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

DATE of Service: March 28, 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 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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