

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0189

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 10, 2021 (decision # 91620). Claimant filed a timely request for hearing. On January 18, 2022, ALJ Frank conducted a hearing at which the employer failed to appear, and on January 26, 2022 issued Order No. 22-UI-184952, affirming decision # 91620. On January 31, 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 her 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) Farber Swim School, LLC ("Farber") employed claimant as a part-time office coordinator from December 2019 until October 14, 2021. Claimant usually worked for Farber from 3:00 p.m. until 7:00 p.m., Pacific standard time (PST), Monday through Wednesday, and would occasionally fill in for absent coworkers on Thursdays. Farber paid claimant \$14.75 per hour and claimant typically worked 16 hours per week. Claimant's round-trip commute to and from Farber totaled 50 miles. Claimant's car travelled 20 miles per gallon and claimant payment paid "three dollars something" per gallon. Audio Record at 16:29.

(2) During most of her period of part-time employment, claimant also performed full-time remote work for greater pay with a separate, east coast based employer (the "east coast employer"). Claimant performed her remote work with the east coast on an eastern standard time schedule that allowed claimant to complete her daily full-time work, while still having sufficient time to timely commute for her part-time work. Claimant's full-time job accounted for 90% of her income, whereas her part-time work with Farber accounted for only 10% of her income.

(3) In September 2021, claimant was laid off by the east coast employer. Prior to the layoff, the human resources director for claimant's full-time employer advised claimant that she would be eligible for unemployment insurance benefits. Claimant determined that to remain with Farber and meet her financial obligations, claimant would need to work 50 to 60 hours per week, but the opportunity for these increased hours was not available with Farber. Claimant decided to quit work with Farber and apply for unemployment insurance benefits. Claimant quit because she could not meet her financial obligations with the part-time work, she could not afford the costs associated with her commute to the part-time work, and because her part-time work schedule impeded her ability to search for a full-time "9 to 5" job that was "east coast based" and would allow her to meet her financial obligations. Audio Record at 11:21; 13:04.

(4) On October 1, 2021, claimant provided Farber notice of her plan to quit effective October 14, 2021. On October 14, 2021, claimant quit her job with Farber.

CONCLUSIONS AND REASONS: Claimant quit working for Farber 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 with Farber because Farber could not provide her additional hours necessary to meet her financial obligations, because she could not afford the costs of her commute to Farber, and because her regular hours with Farber impeded her ability to search for full-time, "east coast based" employment that would allow her to meet her financial obligations. However, although under these circumstances continuing to work for Farber may not have allowed claimant to meet all of her financial obligations, claimant failed to show how she derived any benefit from quitting her part-time work and reducing her income to zero. *See Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work). Being paid for her part-time work with Farber did not create a grave situation for claimant. Rather, quitting her part-time work and reducing her income to zero exacerbated the gravity of her financial situation in the aftermath of her layoff with the east coast employer. A reasonable and prudent person facing similar circumstances would not have concluded they had no other alternative but to leave Farber.

Likewise, although the record suggests that claimant's calculus regarding her continued willingness to commute to Farber may have changed in light of the layoff from her full-time job, claimant failed to show that she could no longer afford the commute and was therefore better off quitting. Rather, the record evidence shows that claimant earned approximately \$236 per week with weekly gas expenses of no more than \$40 per week. As such, the record shows, more likely than not, that claimant's income from her part-time work exceeded her commuting costs and, thus, her commuting costs did not create a

grave situation leaving her no alternative but to leave work when she did. Under these circumstances, by quitting her job with Farber, claimant failed to act as a reasonable and prudent person would have acted under the same or similar circumstances.

To be sure, claimant may have faced a grave situation had her work with Faber impeded her ability to search for full-time work. However, the preponderance of the evidence shows that this was not the case. The record shows that claimant quit her job, in part, to focus on finding a full-time, “east coast based” job opportunity. Prior to her layoff, claimant worked for the east coast employer on an eastern standard time work schedule, which allowed her to complete her work day and still have time to commute to her job with Farber by her 3:00 p.m. PST start time. Thus, it stands to reason that the void in time created by claimant’s layoff from the east coast employer provided claimant the opportunity to fill this void by conducting her work search efforts for east coast work during this time, while still maintaining her part-time work schedule with Farber. To the extent this was not the case, claimant failed to meet her burden to otherwise show how her work with Faber affected her ability to find full-time work, such that it constituted a grave situation leaving her no other alternative but to leave her job with Farber.

Because the record shows that claimant left her work with Farber for reasons that did not constitute good cause, claimant is disqualified from receiving unemployment insurance benefits effective October 10, 2021.

DECISION: Order No. 22-UI-184952 is affirmed.

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

DATE of Service: March 31, 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.



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 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.