

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0236

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 9, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective September 27, 2021 (decision # 82157). Claimant filed a timely request for hearing. On August 16, 2021, the Department served notice of an amended administrative decision vacating and replacing the July 9, 2021 administrative decision, and concluding that the employer discharged claimant for misconduct disqualifying claimant from receiving unemployment insurance benefits effective September 27, 2020 (also decision # 82157).¹ On October 21, 2021, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on October 25, 2021 issued Order No. 21-UI-177896, affirming decision # 82157 by concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving benefits effective September 27, 2020.² On November 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On December 6, 2021, EAB issued EAB decision 2021-EAB-0916, reversing Order No. 21-UI-177896 and remanding the matter for further development of the record.

On February 3, 2022, ALJ Micheletti conducted a hearing, and on February 11, 2022 issued Order No. 22-UI-186233, reaffirming decision # 82157 by again concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving benefits effective September 27,

¹ The Department's August 16, 2021 administrative decision amended their July 9, 2021 administrative decision, in pertinent part, by changing the effective date of the denial of benefits from September 27, 2021 to September 27, 2020. The Department's August 16, 2021 administrative decision retained the same decision number, decision # 82157, from their earlier July 9, 2021 administrative decision. The ALJ construed claimant's request for hearing on the July 9, 2021 administrative decision to apply to the August 16, 2021 administrative decision.

² Order No. 21-UI-177208 stated that it "modified" amended decision # 82157. Order No. 21-UI-177208 at 2. However, Order No. 21-UI-172208 *affirmed* amended decision # 82157, because the order under review did not change the result of amended decision # 82157, but only the reasoning leading to the result.

2020.³ On February 15, 2022, claimant filed an application for review of Order No. 22-UI-186233 with EAB.

WRITTEN ARGUMENT: Claimant did not declare 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). The argument also 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 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) Skyhop Global LLC employed claimant as a driver from 2019 until October 1, 2020. The employer's business consisted of providing transportation for flight crews between the Portland International Airport (PDX) and local hotels.

(2) Prior to September 1, 2020, claimant had worked 40 hours per week and earned approximately \$14.50 per hour. Claimant's work-related expenses consisted only of the \$7.00 to \$8.00 in gas money it cost him to commute on a daily basis from his home to the worksite.

(3) After September 1, 2020, the gradual reduction in commercial flights arriving and departing PDX due to the COVID-19 pandemic resulted in fewer flight crews requiring transportation between the airport and local hotels. The employer reduced claimant's work hours accordingly. During the month of September 2020, claimant worked from 10 to 30 hours each week. Because of the reduction in his hours, claimant believed he could not sustain himself financially and decided to quit his job and look for other work.

(4) On October 1, 2020, claimant resigned his position with the employer. At the time of his departure, claimant had not yet received an offer of other work. If the employer had not reduced claimant's hours, he would have continued working for the employer after October 1, 2020.

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). At the February 3, 2022 hearing, the employer's witness testified that on September 28, 2020, after claimant had received three prior written warnings, claimant's manager met with claimant and discharged him for a fourth "performance-related" violation of the employer's expectations. February 3, 2022 Transcript at 13. However, the employer's witness testified that she was not present at the September 28, 2020 meeting and that her information related to the September 28, 2020 meeting came from her review of the employer's files. February 3, 2022 Transcript at 15, 18. Claimant testified that he did not recall having received any prior written warnings from the employer, that he "had no knowledge of any discharge . . . or any disciplinary, nothing," and that he resigned his

³ The order under review stated that it "modified" amended decision # 82157. Order No. 22-UI-186233 at 3. However, the order under review *affirmed* amended decision # 82157, because the order under review did not change the result of amended decision # 82157, only the reasoning leading to the result.

position on October 1, 2020 because of a reduction in his work hours. February 3, 2022 Transcript at 7. Claimant's first-hand testimony on this issue is entitled to greater weight than the hearsay testimony offered by the employer. The record therefore shows that that claimant quit working for the employer on October 1, 2020.

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). "[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 due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant quit work without good cause. The record shows that claimant left work due to a reduction in hours. In order to show good cause for leaving work due to a reduction in hours, claimant had to show that his job with the employer substantially interfered with a return to full time work, or that the cost of working for the employer exceeded the amount of remuneration he received. At the initial hearing on October 21, 2021, claimant testified that in mid-September 2020, while working reduced hours for the employer, he began looking for other driving jobs with different employers. October 21, 2021 Audio Record at 28:26. Conversely, at the February 3, 2022 remand hearing, claimant testified that he did *not* look for work during the period when his hours were reduced because he believed it would be unfair to the employer to do so. February 3, 2022 Transcript at 11. Either way, claimant failed to show that continuing to work for the employer substantially interfered with his return to full time work.

Likewise, the record shows that in September 2020, when his hours were reduced, claimant earned between \$145 and \$435 per week, while his work-related expenses totaled roughly \$40 per week. As such, claimant failed to show that his reduction in hours with the employer caused the cost of working for the employer to exceed the amount of remuneration claimant received. Claimant therefore quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective September 27, 2020.

DECISION: Order No. 22-UI-186233 is affirmed.

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

DATE of Service: April 20, 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 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 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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