

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0312

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 151226). The employer filed a timely request for hearing. On February 15, 2022, ALJ Demarest conducted a hearing, and on February 16, 2022 issued Order No. 22-UI-186568, reversing decision # 151226 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective August 8, 2021. On March 6, 2022, claimant filed an application for review with the Employment Appeals Board (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) Sunshine Division Inc. Employed claimant as a warehouse worker and driver from December 9, 2019 until August 13, 2021. The employer, a nonprofit corporation, operated a food pantry system.

(2) In early 2021, claimant filed a complaint with the Occupational Safety and Health Administration (OSHA) against the employer regarding several safety concerns that claimant had identified. Claimant's concerns included other employees walking in between storage racks and forklifts, which was a violation of OSHA guidance or regulations, and employees frequently leaving open a gate that was required to be closed. OSHA conducted an investigation based upon claimant's complaint and subsequently raised "four or five items" that the employer was required to address. Transcript at 43. The employer addressed all of the items raised in the OSHA report within two weeks.

(3) In addition to the concerns that he raised in the OSHA complaint, claimant had other safety-related concerns during his time working for the employer. Those concerns included the fact that staff were not trained to use the employer's defibrillator or fire extinguishers and that the defibrillator needed a new battery. Claimant had raised some of these concerns to the operations manager around early 2020, but did not speak to the operations manager about them again.

(4) At some point in 2021, claimant came to believe that the employer planned to begin reusing the cardboard boxes in which they distributed packages of food to those in need, which claimant believed could encourage the spread of COVID-19 in the warehouse. The employer never put this practice in place, however, and only used new, unused boxes to distribute packages of food.

(5) Claimant raised most of his concerns about safety with the warehouse lead worker, who was his direct supervisor. Claimant did not feel that the supervisor adequately addressed claimant's concerns. Around mid-2021, another employee violated protocols relating to operation of forklifts on multiple occasions. In July 2021, claimant's supervisor spoke to the employee about the issue. Thereafter, the employer discharged the lead worker because they felt that he had acted "unhinged" when he "confronted" the other employee. Transcript at 9.

(6) On August 13, 2021, claimant voluntarily quit working for the employer because he "didn't feel safe" at work. Transcript at 5. Prior to quitting work, claimant did not attempt to address his concerns with the employer's human resources specialist, because claimant believed that she primarily handled matters relating to payroll. Claimant did not attempt to address his concerns with the third-party company who handled human resources matters because he believed them to "[have] had nothing to do with [the employer] other than just being a... web application." Transcript at 26. Claimant also did not attempt to raise his concerns with his new supervisor who had been hired about six weeks before claimant quit. At the time that claimant quit, the operations manager was not aware of claimant's safety concerns.

CONCLUSIONS AND REASONS: Claimant quit working for the employer 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 voluntarily quit work due to a number of concerns relating to safety in the workplace. The record shows that some of those concerns, such as those reported to OSHA, had been resolved by the time that claimant quit. Additionally, claimant's concern that the employer would reuse the boxes in which they distributed food packages—which claimant believed was a COVID-19 safety hazard—never happened, as the employer never put the practice into place. Thus, to the extent that claimant quit due to

concerns about safety matters that had already been resolved or that never actually occurred, claimant did not quit for a grave reason, and therefore did not quit with good cause.

To the extent that claimant quit as a result of safety concerns that the employer did not resolve, claimant also did not meet his burden to show that he quit work for a reason of such gravity that he had no reasonable alternative but to leave work. For instance, while claimant's concern that the employer had not trained employees to use the defibrillator—or, perhaps, that the employer later decommissioned the defibrillator entirely—appears objectively reasonable, claimant did not show that the employer was required to keep a working defibrillator on-site. Further, even if claimant's concerns regarding the remaining safety issues rose to the level of a grave situation, claimant did not seek reasonable alternatives prior to quitting.

At hearing, claimant's testimony suggested that he believed that speaking either to the employer's human resources specialist or the third-party company that handled human resources matters for the employer would be futile. However, claimant did not offer evidence to support this assertion. Similarly, claimant did raise his concerns with either his new supervisor or the operations manager close in time to when he quit. At hearing, both the new supervisor and the operations manager testified that they were not aware of claimant's concerns. Transcript at 35, 43. The new supervisor also testified that he would have tried to address claimant's concerns had claimant raised them with him. Transcript at 39. Thus, the preponderance of the evidence shows that, more likely than not, any outstanding safety issues that concerned claimant could have been remedied if claimant had brought them to the employer's attention before claimant quit. Because claimant did not do so, he failed to seek reasonable alternatives, and therefore did not quit for a reason of such gravity that he had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective August 8, 2021.

DECISION: Order No. 22-UI-186568 is affirmed.

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

DATE of Service: May 10, 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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