

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0415

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 14, 2021 (decision # 120945). Claimant filed a timely request for hearing. On February 23, 2022, ALJ Ramey conducted a hearing which was continued with ALJ Frank on March 7, 2022. On March 10, 2022, ALJ Frank issued Order No. 22-UI-188310, affirming decision # 120945. On March 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's March 28, 2022 written argument when reaching this decision because he did not include a statement declaring 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). EAB considered claimant's April 14, 2022 written argument when reaching this decision.

FINDINGS OF FACT: (1) Western Hyway Oil, LLC employed claimant at one of their gas stations as a pump attendant and cashier from October 25, 2021 until November 19, 2021.

(2) On or around November 18, 2021, claimant was working a shift as a pump attendant when the person-in-charge (PIC) came outside from the station's store, accused claimant of smelling like alcohol, and told him that he was "acting strangely." March 7, 2022 Audio Record at 10:37. Thereafter, the PIC told claimant to clock out and go home, which he did.

(3) On November 19, 2021, claimant called the gas station and requested to speak to the manager about the PIC who had sent him home the previous day. However, the person claimant spoke to on the phone, a cashier, told claimant that he did not need to come in. Claimant understood this to mean that he had been discharged, and never returned to work for the employer again.

(4) The person to whom claimant spoke was not authorized to discharge him. Claimant made no further attempts to speak to either his direct manager or anyone else within the employer's chain of command.

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 hearing, the parties offered notably different accounts of the events that led to claimant's work separation. Briefly, claimant testified that he was sent home by the PIC on November 18, 2021, spoke to a cashier the following day who told him that he did not need to come in, and understood from this communication that he had been discharged. Claimant maintained that he did not quit. By contrast, the employer's witness, the general manager of the employer's retail division, testified that claimant had pulled onto the station's lot on either November 19, 2021 or November 20, 2021, was arrested for driving under the influence of intoxicants (DUII), and never returned to work afterwards. Claimant denied that these events occurred. The employer considered claimant to have "walked off the job," and maintained that he voluntarily quit. March 7, 2022 Audio Record at 18:30. While claimant's testimony was based on his own first-hand experience, the employer's witness derived the information in his testimony from an interview he had conducted with the store manager, who herself was informed about the alleged DUII incident by another employee. Because the employer's witness did not personally observe any of the events that led to claimant's separation, the employer's witness's testimony was hearsay. Therefore, claimant's first-hand testimony is entitled to more weight, and the facts in this decision have been found according to claimant's account.

Even under claimant's account of the events which led to his separation from work, however, the record shows that claimant voluntarily quit work. At hearing, the employer's witness testified that nobody other than the store manager was authorized to discharge employees at the station where claimant worked. March 7, 2022 Audio Record at 20:09. Therefore, the cashier to whom claimant spoke on November 19, 2021 could not discharge claimant because they were not authorized to sever the employment relationship. Nevertheless, under claimant's version of events, claimant believed that the cashier's statement meant he was discharged, he took no further action to verify the cashier's statement, and he did not work for the employer again. While such a mistaken belief may have been understandable, it was not correct. Because claimant chose to stop working for the employer, claimant, not the employer, severed the employment relationship. Therefore, claimant voluntarily quit on November 19, 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.

Claimant voluntarily quit work due to his mistaken belief that he had been discharged during a call with a non-management employee on November 19, 2021. Claimant has not met his burden to show that this was a situation of such gravity that he had no reasonable alternative but to leave work. In particular, the record shows that claimant had the reasonable alternative of making additional attempts to confirm his employment status with the store manager or someone else in the employer's chain of command. No reasonable and prudent person, in the face of the ambiguous statement from a non-management employee, would have left work without first making a meaningful effort to determine if they had actually been discharged. Because claimant did not do so, claimant failed to pursue reasonable alternatives.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective November 14, 2021.

DECISION: Order No. 22-UI-188310 is affirmed.

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

DATE of Service: June 16, 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 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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