

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0444

Reversed & Remanded

PROCEDURAL HISTORY: On December 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 145652). The employer filed a timely request for hearing. On March 25, 2022, ALJ Lucas conducted a hearing, and on March 31, 2022 issued Order No. 22-UI-190189, reversing decision # 145652 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective November 21, 2021. On April 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's April 6, 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 7, 2022 written argument when reaching this decision.

FINDINGS OF FACT: (1) Marathon Coach, Inc. employed claimant as a cabinet builder from November 22, 2021 until November 23, 2021. Claimant had previously worked for the employer in a similar position in the early 2000's.

(2) Several years before he began working for the employer in 2021, claimant injured his back. As a result, he was permanently restricted from lifting more than 50 pounds.

(3) Prior to working for the employer, claimant had worked as a dental lab technician, where he earned \$26.00 per hour.

(4) The employer offered the job to claimant with a starting rate of \$17.50 per hour, plus benefits such as health insurance and a 401(k) matching program. The employer maintained a policy whereby employees who did not miss any work for their first 60 days would be eligible for a raise of about \$0.50 per hour.

(5) When claimant began his orientation on his first day of work, he learned that the employer only matched the first \$25.00 of an employee's monthly contribution to their 401(k), rather than a dollar-for-dollar match as he had expected. Claimant also learned that he would be required to pay \$160 per month for his share of the employer-sponsored health insurance. Additionally, while claimant had originally believed that he could physically perform the work that the employer required of him without further injuring his back, claimant came to believe that he might not be able to once he saw what the position required during orientation.

(6) Claimant attended a full day of orientation on November 22, 2022, for which he was paid. On the following day, November 23, 2021, claimant contacted the employer and let them know that he would not be returning to work. Claimant voluntarily quit work that day because of his dissatisfaction with the pay and benefits that the employer offered and because he was concerned that he would be physically unable to perform the job. Had the employer either offered claimant a wage of at least \$20.00 per hour, or had not required him to contribute more than about \$50.00 per month for his health insurance, claimant would not have quit when he did. Claimant also believed it would have been difficult to obtain another job while working full-time for the employer, because he would not be eligible for the 60-day raise if he missed any work to attend job interviews or the like, and that consideration contributed to his decision to quit. Claimant did not have a pending job offer with another employer at the time that he quit.

CONCLUSIONS AND REASONS: Order No. 22-UI-190189 is set aside and this matter remanded for further development of the record.

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. Per OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work.

Claimant quit work after attending one day of the employer's orientation due to his concerns with the pay, benefits, and physical requirements of the job, as well as his concern that it would be difficult to obtain another job while working full time. The order under review concluded that while claimant's dissatisfaction with the offered pay and benefits were "understandable," they did not constitute a grave situation, and claimant therefore quit work without good cause. Order No. 22-UI-190189 at 3-4. The record as developed does not support this conclusion.

The record shows that claimant's primary motivation for quitting was his dissatisfaction with the pay and benefits and, to a lesser extent, his concerns about the physical requirements of the job. However, when asked at hearing why he chose not to continue working for the employer while looking for another job, claimant testified that it "it's just very difficult pursuing another job when you're working full-time days like that and not missing any time." Transcript at 20. Thus, the record shows that claimant's

concerns about the compensation package and physical requirements of the position led him to quit to seek other work. Further inquiry is needed to determine whether this constituted good cause for leaving work.

Under OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work. In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190. On remand, the ALJ should develop the record to determine whether the work was suitable for claimant. In particular, the ALJ should inquire as to whether the rate of pay that the employer offered was commensurate with claimant's prior experience or the prevailing rate of pay for claimant's labor market,¹ and whether claimant could perform the physical requirements of the job without exacerbating his back injury. As the Department is responsible for determining the labor market and prevailing rate of pay for individual claimants, a witness from the Department should testify at the remand hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit work with good cause, Order No. 22-UI-190189 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-190189 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 17, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-190189 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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¹ See OAR 471-030-0037 (January 11, 2018). Although specifically applicable in the separate context of job refusal cases, on remand, the ALJ should also consider applying the criteria set forth under ORS 657.195 to aid in assessing whether the work was suitable.



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.

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