

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0521

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 23, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 6, 2022 (decision # 85813). Claimant filed a timely request for hearing. On April 5, 2022, ALJ Murdock conducted a hearing at which the employer failed to appear, and on April 8, 2022 issued Order No. 22-UI-190931, affirming decision # 85813. On April 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her 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 her 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) Courtyard Center Del LLC employed claimant as a property manager from October 22, 2019 until February 8, 2022. Claimant worked five days per week, for a total of 40 hours per week, as the property manager of one of the employer's properties. The employer paid her \$55,000 per year.

(2) In October 2021, claimant began a maternity leave, and in November 2021, claimant's child was born. Claimant planned to return to work from maternity leave on March 1, 2022. Claimant and her spouse also had a toddler.

(3) As claimant's return to work date approached, she began having discussions with the employer about potentially modifying her work schedule so that she could lower her daycare costs. The cost of placing the children in daycare four days per week would be \$33,600 per year. Claimant had other expenses, including a mortgage payment and car loan and car insurance payments. However, claimant's spouse's income covered those costs.

(4) In early 2022, the employer offered claimant to return to work under the terms that existed before she took leave, meaning that she would manage one of the employer's properties and earn \$55,000 per year working 40 hours per week, five days per week. The employer also offered claimant the option of returning to work as an assistant manager of two properties instead. This option would pay the same rate of \$55,000 per year, but would allow claimant to only work 30 hours per week, five days per week. Under both options, claimant would work Tuesdays through Saturdays. At the time, claimant's spouse's work schedule required him to work Mondays through Fridays. Between the two work schedules, either claimant or her spouse was available to watch claimant's children on Saturdays, Sundays, and Mondays.

(5) Claimant felt that under either option offered by the employer, she would have to place her children in daycare four days per week and incur the \$33,600 per year daycare costs. Claimant also felt that the employer did not value her as an employee when they offered her to return to work at 30 hours per week, but as an assistant manager, because returning to work as an assistant manager "felt [like] going backwards" to claimant. Audio Record at 5:36. Claimant was also concerned that if she returned as an assistant manager managing two properties, she would "end up getting something wrong" and the employer would discharge her. Audio Record at 6:43. For these reasons, claimant decided to quit working for the employer and resigned effective February 8, 2022.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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.

The primary reason claimant quit working for the employer was because she felt that under either option offered by the employer for her return to work from leave, she would have to place her children in daycare four days per week and incur the \$33,600 per year daycare costs. This cost was substantial, and claimant's desire to avoid incurring it was understandable. However, claimant did not show that a reasonable and prudent person would avoid the daycare costs by quitting their job and eliminating their income entirely. The record shows that under either of the employer's return-to-work options, claimant would earn \$55,000 per year, which is more than her \$33,600 per year daycare costs. The record also shows that claimant's other expenses were covered by her spouse's income. As claimant's spouse's income covered her other expenses, and because quitting her job to avoid the cost of daycare meant foregoing income that was significantly higher than the cost avoided, claimant did not show that she faced a situation of such gravity that she had no reasonable alternative but to leave work when she did.

Claimant also quit working for the employer because she felt that the employer did not value her as an employee when they offered her to return 30 hours per week as an assistant manager, because returning to work as an assistant manager "felt [like] going backwards" to claimant. Audio Record at 5:36. While claimant may have been dissatisfied with the assistant manager option, viewed objectively, the record

does not show that the option of returning to work as an assistant manager placed claimant in a grave situation. At hearing, claimant testified that the employer offered the assistant manager option as an accommodation that, because it was a 30 hours per week job rather than a 40 hours per week job, might enable claimant to “get [her] daughters early and negotiate with the daycare” and thereby reduce her daycare costs. Audio Record at 17:33. Claimant further testified that because she would incur costs for each day she had her children in daycare, rather than the particular hours of each day they were in daycare, this option did not reduce her daycare costs. Audio record at 17:44. Even so, while the option may not have been ideal for claimant’s needs, the record shows that the employer offered it in an effort to accommodate claimant. Moreover, the assistant manager arrangement was merely an option, offered at the same rate of pay, which claimant was free to reject in favor of returning to work under the terms that existed before she took leave. Accordingly, claimant did not establish that no reasonable and prudent person would have continued to work for their employer for an additional period of time because of being offered the 30-hours per week assistant manager option.

Claimant also quit working for the employer because she was concerned that if she returned as an assistant manager managing two properties, she would “end up getting something wrong” and the employer would discharge her. Audio Record at 6:43. However, the record shows that claimant was not required to return as an assistant manager, but that the option was merely offered to her along with the other option of returning to her property manager position under the terms that existed before she took leave. Further, even if she had returned as an assistant manager, the record does not show either that she lacked the competence to do the job adequately or that she faced an imminent risk of discharge that might impair her future employment prospects. *Compare McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects). Therefore, claimant did not show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work based on her concern that accepting the assistant manager position, which was optional in any event, would ultimately lead to her being discharged.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 6, 2022.

DECISION: Order No. 22-UI-190931 is affirmed.

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

DATE of Service: July 14, 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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