

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0590

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving unemployment insurance benefits effective February 27, 2022 (decision # 61155). Claimant filed a timely request for hearing. On May 11, 2022, ALJ Blam-Linville conducted a hearing, and on May 13, 2022 issued Order No. 22-UI-193698, affirming decision # 61155. On May 20, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Western Heavy Haul Inc. employed claimant from May 6, 2021 until March 4, 2022. Claimant was originally hired to be a dispatcher for the employer.

(2) Claimant had thirty years' experience as a dispatcher. Claimant also had prior experience performing billing-related work. Dispatcher work required claimant to stand and sit at various times.

(3) From October 29, 2021 until January 3, 2022, claimant was on approved medical leave from the employer while she underwent surgery on her stomach. As part of her recovery from the surgical procedure, claimant's medical provider ordered claimant to perform only light duty at work and to refrain from working more than six hours per day. The employer was aware of claimant's medically related work restrictions. Claimant returned to work, but within a week of her return, claimant contracted an illness and was placed on an additional 14 days of medical leave to recover.

(4) On January 26, 2022, claimant returned to work and initially resumed her position as a dispatcher. Due to her stomach surgery claimant preferred to spend her work time standing when possible, because long periods of sitting hurt her stomach. A few days later, the employer informed claimant that they wanted to train her in other job duties, including work as a billing agent in their billing department. The employer told claimant that they had no plans to remove her from her dispatcher work and that they had taken out an advertisement to try to hire somebody permanently for the billing agent position. Claimant was willing to perform these billing responsibilities until the employer found a permanent replacement.

(5) Prior to March 2, 2022, claimant performed billing work for the employer. During some workdays, claimant worked longer than the six-hour restriction ordered by her medical provider because she wanted to help the employer by completing unfinished billing. Although claimant could perform billing work, she found billing work to be “boring,” disliked having to sit in a cubicle to perform the work, and disliked the solitary nature of billing work. Audio Record at 13:10. Claimant also experienced physical discomfort while performing billing work because the predominantly sitting nature of the work hurt her stomach.

(6) On March 2, 2022, claimant worked the first part of her shift in the billing department and then returned to her desk in the dispatching area. Claimant asked the employer at that point if she should perform dispatching work, or go ahead and leave for the day. The employer responded that they did not want claimant to worry about working in dispatch anymore. Instead, the employer told claimant they wanted her to concentrate on her billing work for the time being, that they were no longer seeking a permanent replacement for the billing department, and that eventually claimant might return to dispatch work. Claimant was “pissed . . . off” by the employer’s decision and felt that they were pushing her into billing work that she did not want to perform. Audio Record at 17:08. Claimant was also upset because she believed the employer had consistently violated her medical provider’s directive that she not work more than six hours per day.

(7) On March 4, 2022, claimant notified the employer she was quitting, effective immediately.

CONCLUSIONS AND REASONS: Claimant quit 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.

Leaving work without good cause includes, but is not limited to, leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). In determining whether any work is suitable for an individual, the 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.

Claimant quit work because she did not want to continue performing billing work, which she found dissatisfying, because the sitting nature of the work caused her physical discomfort, and because she believed the employer had violated her doctor’s instructions that she not work longer than six hours per day. However, while the record shows that claimant’s dissatisfaction with the billing work was due, in part, to its “boring” and solitary nature, claimant’s dissatisfaction in this regard did not create a grave

situation, such that a reasonable and prudent person, exercising ordinary common sense, would have left work. Likewise, the fact that claimant's billing work was predominantly sitting work, which would cause her stomach discomfort, does not rise to the level of a grave situation where, as here, the record offers no indication that it would have been unreasonable for claimant to stand while performing billing work when necessary. Instead, the record shows that claimant was capable of performing billing work and had prior experience performing such work, and claimant failed to otherwise show that billing work was not suitable work for her to perform. As to the suitability of the billing work, the record does not suggest, for example, that the work posed a risk to claimant's health or safety or that claimant lacked the physical fitness or training to perform the work adequately because, as mentioned above, the record does not indicate that claimant could not have stood while performing the billing work.

Furthermore, although claimant asserted that her decision to quit was also based in part on her shift-work regularly exceeding the six-hour restriction implemented by her medical provider, the record fails to show that the employer mandated that she exceed the six-hour limit. Rather, the record shows that in those instances where claimant worked longer than six hour shifts she chose to do so in order to help the employer with unfinished billing. As such, claimant failed to show that she faced a grave situation at work requiring her to quit work when she did.

For these reasons, claimant quit working for the employer without good cause and is disqualified from receiving unemployment insurance benefits effective February 27, 2022.

DECISION: Order No. 22-UI-193698 is affirmed.

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

DATE of Service: August 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.

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