

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0716

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective April 11, 2021 (decision # 123618). Claimant filed a timely request for hearing. On June 8, 2022, ALJ Wardlow conducted a hearing, and on June 9, 2022, issued Order No. 22-UI-195764, affirming decision # 123618. On June 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bar Seven A Trucking employed claimant as a spa director at Renew Medical Spa from August 10, 2020 until April 15, 2021.

(2) As the spa director, claimant was a full-time employee who performed managerial duties as well as sales consultations. Claimant commuted daily from Bend to Redmond, which cost her \$120 per week.

(3) On April 13, 2021, claimant informed the employer that she would not be coming into work for the next one to two weeks pending the results of her daughter's COVID-19 test.

(4) On April 15, 2021, the employer sent an email to claimant stating that they were looking for someone to take on claimant's management responsibilities. The email continued that the employer hoped claimant would continue at Renew in a different capacity, but that claimant's frequent absences necessitated finding a new manager. Transcript 15-16.

(5) On April 15, 2021, claimant responded to employer's email, stating, "I'm not interested in a position other than the one I was hired for. I will take this as you terminating my employment." Transcript at 14.

(6) On April 16, 2021, the employer sent another email to claimant stating that claimant's employment had not been terminated, and describing claimant's new non-managerial position, which would be a part-time position that included a reduction in hours and in wages. Claimant would work two to four

days a week, eight hours per day, and would likely earn \$20.00 per hour plus commission. Previously, claimant worked full-time and was paid \$31.00 per hour.

(7) Claimant responded to the April 16, 2021 email that she could not take a pay and hour cut and reiterating her belief that her employment had been terminated. The parties then exchanged several emails regarding dropping off keys, picking up personal items, and claimant's final paycheck.

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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

At hearing, claimant testified that she believed the employer discharged her. Transcript at 5. However, the record shows that claimant voluntarily quit. At the time of the work separation, the employer informed claimant that they were seeking someone else for her current position and offered claimant continuing work in an alternative position. This position would have allowed claimant to continue working for the employer on a part-time basis. Claimant responded to the employer by stating that she was not willing to accept any alternative position. Transcript at 14. Claimant never informed the employer that she quit and replied to an email from the employer by saying that "I'll take this as you terminating my employment[.]" Transcript at 14. However, because claimant had the option to continue working for the employer, albeit in a less desirable position, she voluntarily ended her employment. The record shows claimant could have continued to work for the employer for a period of time after April 16, 2021, chose not to, and therefore voluntarily quit work on that date.

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). "[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.

A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e). A claimant who leaves work due to a reduction in pay has left work without good cause unless "the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area," as determined by the Department using available research data compiled by the Department. OAR 471-030-0038(5)(d). However, OAR 471-030-0038(5)(d) "applies only when the employer reduces the

rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.” OAR 471-030-0038(5)(d)(A).

Claimant voluntarily left her job on April 16, 2021 without good cause. Claimant testified that she was unable to accept a reduction in hours because “it wouldn’t financially make sense to commute to Redmond for a part time job.” Transcript at 7. At hearing, claimant testified that her weekly costs for commuting from Bend to Redmond full time were \$120. Transcript at 5. The employer testified that claimant’s pay rate in the non-managerial part-time position would have been \$20 per hour plus commission. Transcript at 18. Additionally, the part-time position would be between two and four days a week. Transcript at 17.

Applying OAR 471-030-0038(5)(e), claimant failed to show that continuing to work part time would substantially interfere with her ability to return to full time work. Claimant also failed to show that the cost of working would have exceeded the amount of remuneration received. Claimant testified that her costs of commuting to Redmond full-time were \$120 per week. However, she did not present evidence of her estimated costs for commuting two to four days per week, or show that these costs would exceed the remuneration she would receive from the part-time position earning \$20 per hour (plus commission). Claimant therefore failed to establish that she quit with good cause under to OAR 471-030-0038(5)(e).

Claimant also failed to show that she had good cause to quit because of the reduction in her pay. The employer testified that claimant’s managerial position had a pay rate of \$31 per hour and the new position would likely pay \$20 per hour. However, this reduction was the result of the employer demoting claimant from a managerial position to a lower-paying, non-managerial position. The record therefore shows that the reduction in pay was the result of a position transfer, reassignment, or demotion, which is not good cause for leaving work under to OAR 471-030-0038(5)(d)(A).

Claimant therefore quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective April 11, 2021.

DECISION: Order No. 22-UI-195764 is affirmed.

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

DATE of Service: September 13, 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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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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