

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0806

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective March 27, 2022 (decision # 143935). Claimant filed a timely request for hearing. On June 28, 2022, ALJ Buckley conducted a hearing, and on June 30, 2022 issued Order No. 22-UI-197234, affirming decision # 143935. On July 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments 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 him 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) Baney Corporation employed claimant as the chief maintenance engineer at one of their hotels from May 24, 2021 until March 31, 2022.

(2) In his role, claimant was responsible for ensuring that the employer's hotel complied with safety regulations. During the course of his employment, claimant became concerned that the hotel did not comply with safety regulations in two areas. First, claimant was concerned about the storage of housekeeping carts in front of doors leading to the room on each floor that contained electrical panels. Claimant believed that storing the carts in front of the doors could impede access to the panels in case of

emergency. Second, claimant was concerned that items throughout the hotel were stored too close to fire-suppression sprinklers, which could impede the sprinklers' effectiveness in case of fire.

(3) Claimant raised his concerns about these issues on multiple occasions with the hotel's general manager and assistant general manager. The employer did not address the matter of access to the electrical panels, largely because they were unsure of where else the housekeeping carts could be stored. Claimant felt uncomfortable with personally moving the boxes and other items around the sprinklers because the items belonged to other departments and he believed that he would be reprimanded if he did so. However, the employer would not have disciplined claimant if he had moved the items away from the sprinklers. Additionally, the employer ensured that at least one of the items—a piece of furniture in a guest room—was moved away from the sprinkler in the room.

(4) On March 15, 2022, claimant informed the general manager during a meeting that he intended to resign on March 31, 2022. Claimant decided to resign because he was concerned for the safety of the hotel occupants in relation to the safety issues he had raised. On March 31, 2022, claimant voluntarily quit working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily 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.

Claimant voluntarily quit work due to issues that he believed constituted violations of safety regulations, and which he felt the employer had not addressed. As a preliminary matter, the record contains some conflicting evidence as to whether the electrical panel access issue constituted a grave situation. At hearing, the general manager of the hotel testified that his supervisor told him that a safety inspector had said during an inspection before claimant began working for the employer that the employer was permitted to keep the housekeeping carts where they were. Transcript at 23. The general manager did not witness the inspection because it occurred before he worked for the employer, and did not know which agency conducted the inspection. Nor does the record show that the general manager had specialized knowledge regarding hotel safety regulations. By contrast, claimant's position required him to ensure the hotel complied with safety regulations. Claimant's first-hand expertise regarding the risk of having housekeeping carts obstructing continuous access to the electrical panels is afforded more weight than the hearsay the general manager offered from the inspection. As such, the record shows that the storage of the carts by the electrical panels more likely than not constituted safety violations. Additionally, the employer did not offer evidence to rebut claimant's assertion that the storage of items near sprinklers also constituted safety violations. Because claimant quit due to these safety violations, which could have potentially resulted in injury or death if not remedied, claimant quit for a grave reason.

However, claimant quit work without good cause because he did not seek the reasonable alternative of simply moving the items in order to resolve the safety violations. At hearing, claimant testified that he felt it was “not impossible” to store the housekeeping carts elsewhere, but that he did not move them himself because the general manager told claimant that claimant was not permitted to move the housekeeping carts. Transcript at 8, 11. Similarly, regarding the items stored near sprinklers, claimant testified that he did not move the items himself because he believed it to be the responsibility of the departments who owned the items to move them, and because he believed he would be disciplined if he did so himself. Transcript at 8, 9, 17. The general manager refuted claimant’s assertions, testifying that claimant would not have been disciplined if he had moved other departments’ items away from the sprinklers. Transcript at 26. The general manager further testified that he told claimant that he would “love to move” the housekeeping carts because claimant was concerned about them, and that claimant should let the general manager know if he found a space for them. Transcript at 35.

The record evidence is equally balanced as to whether claimant could have moved the items in question in order to remedy his safety concerns. Because claimant bears the burden of proof in this case, the preponderance of the evidence shows that claimant could have moved the housekeeping carts and the items near the sprinklers, and that doing so would have remedied his concerns. As claimant did not do so, he did not seek reasonable alternatives to quitting, and therefore quit without good cause.

For the above reasons, claimant voluntarily quit work without good cause, and therefore is disqualified from receiving unemployment insurance benefits effective March 27, 2022.

DECISION: Order No. 22-UI-197234 is affirmed.

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

DATE of Service: October 20, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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