

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0844

Modified
Late Request for Hearing Allowed
Disqualification

PROCEDURAL HISTORY: On December 29, 2020, 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 November 10, 2019 (decision # 122310). On January 19, 2021, decision # 122310 became final without claimant having filed a request for hearing. On September 5, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 14, 2021 issued Order No. 21-UI-174716, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 28, 2021. On October 3, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-174716 with the Employment Appeals Board (EAB).

On March 6, 2022, ALJ Kangas mailed a letter stating that because claimant's response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order regarding the matter, and that Order No. 21-UI-174716 remained in effect. On March 24, 2022, however, EAB issued EAB Decision 2022-EAB-0366, remanding the matter to OAH for a hearing on whether claimant's late request for hearing on decision # 122310 should be allowed and, if so, the merits of that decision. On July 28, 2022, ALJ Roberts conducted a hearing, and on July 29, 2022 issued Order No. 22-UI-199319, allowing claimant's late request for hearing on decision # 122310 and reversing decision # 122310 by concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation. On August 2, 2022, the employer filed an application for review of Order No. 22-UI-199319 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing on decision # 122310 is **adopted**. The remainder of this decision addresses whether claimant quit working for the employer with good cause.

FINDINGS OF FACT: (1) Staffing Partners, LLC employed claimant from about May 13, 2019 to about November 2, 2019. The employer was a temporary agency, and claimant worked on an assignment for one of the employer's clients.

(2) While working for the employer's client, claimant sought to become the client's permanent employee, as this would offer him better pay and benefits. In late October 2019, the client told claimant that they intended to hire him permanently.

(3) Shortly after the client told claimant that they intended to hire him permanently, claimant's sister-in-law asked claimant to drive her out of state to attend the funeral of her stepfather, who had just died. Claimant agreed to drive her, but needed to take a day off from work to do so. The day before he left for the funeral, claimant called the client and let them know that he needed the following day off, to which the client responded, "okay." Transcript at 26. After claimant returned, the client's human resources department advised him that they were no longer going to hire him for a permanent position at that time because he already had taken a few days off, and that he would have to work for them through the employer for another six months before they would reconsider hiring him permanently.

(4) Claimant felt that the client was "playing a game" by deciding not to hire him permanently, and no longer wished to work for them. Transcript at 25. On or about November 2, 2019, he contacted the employer and asked them what he could do about the situation. The employer told claimant that his only option was to be reassigned to another client, which claimant found acceptable. The employer told claimant to call them on a weekly basis to let them know that he was available for work, and that they would reassign him to another job "ASAP." Transcript at 30. The employer did not tell claimant that they already had another assignment available for him, and did not have one available for him. Nevertheless, claimant believed that the employer already had another assignment for him, and consequently did not return to work for the client. Thereafter, claimant continued to call the employer on a weekly basis for several weeks, but was not assigned to a different job.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed. Claimant quit working for the employer 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). In the case of individuals working for temporary agencies, the employment relationship "shall be deemed severed at the time that a work assignment ends." OAR 471-030-0038(1)(a).

At hearing, claimant asserted that he did not quit, but merely asked the employer to reassign him to a different job, and that he called the employer for several weeks in an attempt to be reassigned. Transcript at 24. Essentially, claimant argues that his employment relationship with the employer was not severed at the time he stopped working for the client because he continued to be available for other work through the employer. Under OAR 471-030-0038(1)(a), however, the employment relationship

with a temporary agency ends at the time that a particular work assignment ends, and not when the individual stops seeking work through the agency. The employment relationship therefore was severed when claimant stopped working for the client. Further, the record shows that the client would have permitted claimant to continue working for them for an additional period of time, but that claimant was no longer willing to do so. The work separation therefore was a voluntary leaving.

The record is not clear as to when the separation occurred. At hearing, claimant was uncertain when it occurred, but suggested that it might have been November 2 or 4, 2019. Transcript at 24. The ALJ nevertheless determined that claimant quit on November 11, 2019, in accord with the findings made in decision # 122310. Order No. 22-UI-199319 at 2. The ALJ did not explain why November 11, 2019 was chosen as the date of separation, nor does the record otherwise support that conclusion. As claimant's testimony was uncontroverted, and no other evidence in the record shows when the separation occurred, it is appropriate to find facts in accord with claimant's testimony. Because November 4, 2019 was a Monday, and claimant had already been absent during the week he quit, the record shows that claimant likely quit on Saturday, November 2, 2019.

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) (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.

Under OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work. Under OAR 471-030-0038(5)(a), a claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay: An amount equal to or in excess of the weekly benefit amount; or An amount greater than the work left." OAR 471-030-0038(5)(a).

Claimant voluntarily quit work on November 2, 2019 because he felt that the client was "playing a game" by deciding not to hire him permanently after he took a day off to drive his sister-in-law to a funeral. The order under review concluded that this constituted a grave situation because claimant "had worked hard for nearly six months for the permanent position," which paid better and offered better benefits, and that if he continued the assignment, the client could potentially again decide not to hire him after having agreed to do so. Order No. 22-UI-199319 at 4. The record does not support this conclusion.

Claimant's dissatisfaction with the client's decision not to hire him was understandable, particularly given that he took the day off with the client's apparent approval, and that he did so to help a grieving family member. However, claimant has not met his burden to show that this constituted a grave situation. Before claimant left to drive his sister-in-law to the funeral, he expected his employment circumstances to improve by way of a permanent hire, which would include a raise and better benefits.

Nevertheless, the record does not show that claimant's circumstances were materially different than they had been in the preceding six months, such that he would have been at some sort of disadvantage if he continued to work for the client as he had been doing. Further, the record does not show that claimant's decision to quit, rather than remain working through the employer's agency, benefitted him in any way. *See Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work). Although claimant may have felt that quitting was warranted due to the client's decision not to hire him permanently, the record fails to show that claimant benefitted by quitting the work assignment. Therefore, to the extent that claimant quit work due to the client's decision not to offer him a permanent position; claimant did not face a grave situation, and did not have good cause to quit.

Claimant also quit when he did, in part, because he was informed by the employer's suggestion that he could be reassigned to another client, and the mistaken belief that another assignment was already available to him. To the extent that claimant quit in order to seek other work (by way of another assignment with the employer), he did not have good cause to quit. Under OAR 471-030-0038(5)(b)(A), leaving suitable work to seek other work is not good cause for quitting. The record does not show that the work claimant left was unsuitable, and the fact that he worked there for six months and was planning to accept an offer of permanent employment with the client suggests that it *was* suitable. Similarly, to the extent that claimant quit in order to accept an offer of other work, claimant did not, under OAR 471-030-0038(5)(a), quit with good cause because no definite offer of other work was made to claimant.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective October 27, 2019.

DECISION: Order No. 22-UI-199319 is modified, as outlined above.

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

DATE of Service: November 4, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.