

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0922

Late Application for Review Allowed
Reversed
No Disqualification

PROCEDURAL HISTORY: On March 5, 2021, 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 December 22, 2019 (decision # 111618). Claimant filed a timely request for hearing. On November 9, 2021, ALJ Mann conducted a hearing, and on November 10, 2021 issued Order No. 21-UI-179415, affirming decision # 111618. On November 30, 2021, Order No. 21-UI-179415 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On September 3, 2022, Claimant filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's application for review and an email regarding the application for review, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Formit, Inc. employed claimant from April 10, 2015 until December 24, 2019.

(2) Beginning in November 2016, claimant lived with her domestic partner in Portland, Oregon. Their monthly rent was more than claimant could afford on her own.

(3) Around December 2019, claimant's domestic partner accepted a new employment position in Eugene, Oregon. Eugene is approximately 110 miles from Portland. Claimant decided to move to Eugene in order to continue living with her domestic partner when he relocated. Claimant notified the employer that she would be quitting.

(4) On December 24, 2019, claimant quit working for the employer to relocate with her partner to Eugene.

(5) Order No. 21-UI-179415 mailed to claimant on November 10, 2021, stated “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date this decision was mailed.” Order No. 21-UI-179415 at 3. Order No. 21-UI-179415 also stated on its Certificate of Mailing, “Any appeal of this order must be filed on or before November 30, 2021 to be timely.”

(6) In November 2021, claimant received Order No. 21-UI-179415 in the mail. Claimant disagreed with the decision and submitted an application for review of Order No. 21-UI-179415 with EAB online. However, EAB did not receive the application for review due to an unknown error. Claimant was unaware that her submission had not been received.

(7) On or about August 31, 2022, claimant received notice of an overpayment based in part on Order No. 21-UI-179415. The notice of overpayment indicated that claimant did not appeal Order No. 21-UI-179415.

(8) On September 3, 2022, claimant resubmitted her application for review of Order No. 21-UI-179415 with EAB online.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-179415 is allowed. Claimant quit working for the employer with good cause and is not disqualified from receiving benefits based on the work separation.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

An application for review of Order No. 21-UI-179415 was due by November 30, 2021, and claimant’s September 3, 2022 application for review therefore is late. Claimant provided a written statement along with the application for review. In it, claimant explained that she submitted a timely application for review of Order No. 21-UI-179415 in November 2021 after receiving the order in the mail, and received no response or notification stating the submission had been unsuccessful. On August 31, 2022, claimant received notice of an overpayment decision, and from this notification claimant realized that her November 2021 submission was unsuccessful. Claimant then filed an online application for review with EAB on September 3, 2022.

Claimant’s written statement shows that the September 3, 2022 application for review was late because of factors beyond claimant’s reasonable control. Based on claimant’s statements in the September 3,

2022 application for review, claimant submitted a timely application for review online, but EAB did not receive the application for review due to an unknown error.. This error was beyond claimant's reasonable control, and claimant did not become aware of it until she received notice of an overpayment decision on August 31, 2022. The circumstance that prevented claimant from timely filing therefore ended on August 31, 2022 when she learned that her initial application for review was not received. Claimant's September 3, 2022 submission therefore was within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Claimant's late application for review of Order No. 21-UI-179415 therefore is allowed.

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)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. Under OAR 471-030-0038(1)(e), "Compelling family reasons" includes:

- (C) The need to accompany the individual's spouse or domestic partner;
 - (i) To a place from which it is impractical for such individual to commute; and
 - (ii) Due to a change in location of the spouse's or domestic partner's employment.

The order under review concluded that claimant was disqualified from benefits because she quit work in order to relocate with her long-term domestic partner, and that this was not a compelling family reason. However, the record does not support that conclusion.

It is undisputed that claimant decided to relocate with her domestic partner from Portland, Oregon to Eugene, Oregon after her partner accepted employment in Eugene. Claimant testified and provided documentary evidence that the move from Portland to Eugene was the result of her domestic partner's relocation for employment. Exhibit 3 at 4; Audio record at 7:45. Eugene is roughly 110 miles from Portland, far enough away that it would have been impractical for claimant to commute to Portland for her work with the employer. Claimant therefore demonstrated that she meets all requirements for the compelling family reason of moving to accompany an individual's partner.

The order under review determined that despite meeting these requirements, claimant had not demonstrated a compelling family reason because she failed to demonstrate that her move was based on a "need" to do so. However, remaining together with one's spouse or domestic partner is itself a sufficiently compelling need, and a claimant is not required to further show that being separated is sufficiently grave and that quitting was without reasonable alternatives. A compelling family reason, as

defined by OAR 471-030-0038(1)(e), is an independent means of establishing good cause. If a claimant were required to also show the situation was sufficiently grave and quitting was without reasonable alternatives, there would be no reason to invoke the compelling family reason to establish good cause. It therefore is sufficient for a claimant to show that they meet the requirements of a compelling family reason, as claimant has done here.

Claimant quit working for the employer with good cause because of a compelling family reason and therefore is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 21-UI-179415 is set aside, as outlined above.

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

DATE of Service: November 30, 2022

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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.

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