

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0987

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 19, 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 benefits effective September 5, 2021 (decision # 73135). Claimant filed a timely request for hearing. On September 21, 2022, ALJ L. Lee conducted a hearing, and on September 23, 2022 issued Order No. 22-UI-203487, affirming decision # 73135. On September 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Maller Painting LLC employed claimant as a painter from April 2021 through September 7, 2021.

(2) In June 2021, claimant was involved in an argument with a coworker while on a jobsite in view of the public. Claimant left the worksite to deescalate the situation and immediately informed the employer. While the employer's owner approved of claimant's handling of the situation after it escalated, he warned claimant not to engage in any further public arguments on the worksite.

(3) On September 6, 2021, claimant confronted a different coworker because claimant suspected him of using heroin on the worksite. The matter escalated to a loud, public argument between claimant, the coworker, and another coworker. Claimant left the worksite to deescalate the situation without immediately calling the owner to report it.

(4) The owner was aware of claimant's allegation regarding heroin use against this coworker prior to the argument but felt he did not have sufficient proof to take action against the coworker at that time. In September 2021, claimant was not working closely with that coworker, and claimant was not concerned that the coworker's drug use was endangering claimant's safety. Claimant, a recovering drug addict, was also not concerned with the effect of this drug use on his own sobriety. Claimant's only concern was for the safety and wellbeing of the coworker and those around him. Transcript at 51-53.

(5) On September 7, 2021, the owner issued a final warning to claimant about engaging in arguments on the worksite. Claimant, upset about the situation, told the owner that he quit and immediately left the worksite. The coworker was discharged for drug use shortly after claimant quit.

(6) Claimant suffered a work-related back injury prior to his resignation. The employer accommodated his injury with light duty work. The injury did not significantly impact claimant's decision to quit.

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.

The coworker's use of heroin on the worksite concerned claimant because of the danger it posed to that coworker and those around him. Transcript at 53. However, claimant did not feel personally affected by the drug use. Claimant testified that he was assigned to pressure-washing duties and therefore not working in close proximity to the coworker. Transcript at 51. He testified that despite his own history of drug addiction, he was not concerned that the coworker's heroin use would make him want to use drugs again. Transcript at 53. Because the coworker's drug use did not directly impact claimant's work, a reasonable and prudent person of normal sensitivity would not have found this a reason of such gravity as to require quitting work.

Even if the coworker's drug use posed a grave situation for claimant, claimant chose to engage in a public argument with the coworker rather than pursue the issue with the owner despite having been warned in June 2021 about engaging in public arguments at the worksite. Claimant had mentioned his concern to the owner, but admitted that he did not make his point as strongly as he could or should have. Transcript at 53. Following up with the owner on this issue was a reasonable alternative to quitting which likely would not have been futile, as the employer discharged the coworker for drug use shortly after claimant quit.

Claimant was given a final warning on September 7, 2021 not to engage in any further arguments while on the worksite, and testified that he quit, in part, because he was upset that the owner did not think that he had "handled [himself] right." Transcript at 6. However, claimant failed to show that he was incapable of continuing to work without engaging in another argument, and admitted that his decision to quit was hastily made, testifying that he "... just wasn't . . . thinking rationally," and that, "it was just a rough morning." Transcript at 26, 52. The final written warning and the owner's concerns about claimant's behavior were not such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have quit work.

Although claimant initially mentioned a back injury as a reason for quitting, he later testified that the employer had placed him on “light work” as an accommodation. Transcript at 6, 52. He further stated that he was working on “moving up” within the company and testified that the employer had entrusted him with a truck. Transcript at 51. More likely than not, claimant’s injury and its impact on his job duties were not factors in his decision to quit.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective September 5, 2021.

DECISION: Order No. 22-UI-203487 is affirmed.

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

DATE of Service: December 8, 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.surveymzmo.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.