

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0990

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective June 19, 2022 (decision # 102332). Claimant filed a timely request for hearing. On September 19, 2022, ALJ Frank conducted a hearing, and on September 21, 2022 issued Order No. 22-UI-203233, affirming the Department's decision. On September 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Greenlight Medical Transport employed claimant as a medical transport driver from approximately September 2021 through June 21, 2022.

(2) Claimant had previously worked for the employer but left the work for similar employment closer to her home. Claimant agreed to return to work for the employer in September 2021 on the condition that the employer would pay claimant's commuting expenses to and from the employer's location in Albany, approximately 25 miles away from claimant's home, by allowing her to use the employer's car.

(3) Claimant agreed with the employer that her wages would be a percentage of the ride fees collected for rides given by the claimant. Claimant was not paid for rides that were cancelled, even if claimant commuted to and from the worksite and waited hours for the passenger before the cancellation.

(4) In the first quarter of 2022, claimant worked at least 520 hours for the employer and was paid \$6,142.20. Her wages and hours remained consistent through June 21, 2022.

(5) On approximately June 14, 2022, the employer notified claimant that she would no longer be permitted to use the employer's car for commuting, and that claimant would be responsible for her own commuting expenses. The employer attributed this change to their discovery that the employer's insurer would not cover an employee's use of a vehicle for commuting. Claimant attempted to negotiate for all or part of these expenses but no agreement was reached. Claimant gave notice to the employer that she was quitting because she felt she was not being compensated sufficiently for her work. She offered to serve a two-week notice period, which the employer accepted.

(6) On June 21, 2022, claimant advised the employer that she could not complete the notice period and that she would not be returning after that day.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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).

The Order under review concluded that claimant quit without good cause and should be disqualified from benefits. It reasoned that claimant earned more in wages than the cost of her commute, so the employer's decision to discontinue paying for commuting expenses did not make claimant's dissatisfaction with her compensation of sufficient gravity to justify quitting.

The Department's records show that the employer reported claimant earned \$6,142.20 by working 520 hours during the first quarter of 2022. This equates to claimant having been paid an average of \$11.81 per hour of work during the quarter. Claimant agreed with these earnings records. Audio Record at 14:10 to 14:30. The employer testified that claimant grossed approximately \$2,000 per month, which is consistent with the earnings records. Audio Record at 24:06 to 24:10. We can infer from this testimony that claimant's wages and hours remained consistent from this quarter through her separation from employment in June 2022.

The employer was required to pay claimant a minimum wage of \$12.75 per hour because the employer was located in Linn County. ORS 653.025(1)(h). An employee's agreement to work for less than the minimum wage does not invalidate this requirement. ORS 653.055(2). Claimant was not paid on an hourly basis, and was perhaps unaware of the law's application to her employment. She testified she often ended up only being paid for a few of the hours she worked under the arrangement when a ride was unexpectedly cancelled. Audio Record at 26:46 to 27:19. The employer's wage agreement with claimant did not result in claimant being paid the equivalent of at least \$12.75 for each hour worked, violating the minimum wage statute.

Despite any misgivings claimant had about the amount she received for the total hours worked, she was willing to continue under these terms as long as the employer paid her commuting expenses through allowing her use of the car. When the employer unilaterally changed the agreement to stop allowing

claimant use of the car for commuting, claimant quit because she felt the job was no longer “worth that to [her].” Audio Record at 27:16 to 27:19. Her resignation was not merely a reaction to a fringe benefit being discontinued; rather, it reflected a realization that she was not being adequately compensated for her labor. Claimant’s feeling was valid in that based on the record under review, the employer’s pay practices violated the minimum wage statute.

The Court of Appeals has recognized that it may be good cause for a claimant to leave work when on an ongoing basis an employer has engaged in pay practices that violate Oregon wage and hour laws. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 464, 954 P2d 1265 (1998) (claimant had good cause to leave work when dispute over wage practices was ongoing and likely to recur in the future); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990) (claimant had good cause to leave work when employer failed to pay him twice in accordance with Oregon law and there was no evidence that the employer would not continue failing to do so); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (not good cause for claimant to leave work when wage dispute not ongoing or likely to recur, and only remaining issue was amount of the back pay owed to claimant. Here, it is more likely than not that claimant’s wages would continue to be paid below the amount required by law in light of the employer’s inability to reach an agreement with claimant in June 2022 over paying even some of her commuting expenses. The applicable minimum wage was scheduled to increase in the week following claimant’s separation to \$13.50 per hour. ORS 653.025(i). There is no evidence the employer intended to increase her compensation at that time, even in an attempt to prevent claimant from quitting.

The employer’s apparent ongoing violation of minimum wage law was a reason of sufficient gravity that claimant had no reasonable alternative but to leave work. Claimant had good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 22-UI-203233 is set aside, as outlined above.

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

DATE of Service: December 9, 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.

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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 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
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