

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1043

Reversed
Disqualification

PROCEDURAL HISTORY: On August 9, 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 26, 2022 (decision # 131851). Claimant filed a timely request for hearing. On August 30, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 13, 2022 but failed to mail the notice to the employer. On September 13, 2022, ALJ Lucas conducted a hearing, at which the employer failed to appear. On September 14, 2022, OAH served notice of a hearing scheduled for September 29, 2022, which was mailed to both claimant and the employer. On September 29, 2022, ALJ Lucas conducted a hearing, at which both parties appeared, and on October 7, 2022, issued Order No. 22-UI-204584, reversing decision # 131851 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On October 12, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Shirtcliff Oil Co. employed claimant as a truck driver from July 16, 2021 until June 29, 2022.

(2) On June 29, 2022, claimant noticed the truck the employer assigned him to drive had disconnected wires involving the automatic braking system (ABS) and the corresponding warning light on the dashboard was covered with black tape.

(3) Upon making this discovery, claimant advised the employer's owner that he would no longer drive their vehicles due to safety concerns. The employer spent 45 minutes offering potential solutions to address claimant's safety concerns in an effort to persuade him to drive. The employer asked if claimant would take the truck to a mechanic to evaluate the issue, but claimant refused. The employer then offered to allow claimant to drive a different, newer truck, but claimant refused. Claimant articulated no specific safety concerns about the newer truck, but was concerned about what he perceived as the employer's indifference to safety generally. He was also concerned that one of his coworkers would drive the truck with the ABS issue.

(4) After claimant refused to take the truck with the ABS issue to the mechanic and declined to drive the newer truck, he did not propose anything to the employer that would address his safety concerns. Instead, claimant refused to drive and insisted that the employer either fire him or lay him off.

(5) On June 30, 2022, the employer considered claimant to have quit the previous day after continuing to refuse to drive. They advised claimant that his final paycheck was ready. Claimant believed he had been laid off.

(6) After claimant's work separation, the employer contacted the mechanic shop that regularly repaired the truck and learned that the alterations to the ABS system were performed by the shop in accordance with generally accepted practices. The truck later passed a Department of Transportation inspection in that condition. The employer's other two drivers were aware of the truck's condition but were unconcerned.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

Nature of the Work Separation. If an 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 nature of the work separation was a voluntary leaving that occurred on June 29, 2022. On that date, claimant demonstrated that he was not willing to continue working for the employer for an additional period of time by refusing to drive the employer's trucks, refusing the employer's offers to resolve claimant's concerns, and demanding that the employer fire him or lay him off. In contrast, the employer made continuing work available to claimant on June 29, 2022, and spent 45 minutes that day offering potential solutions to address claimant's safety concerns in an effort to persuade him to drive. Because claimant could have continued working for the employer for an additional period of time on June 29, 2022 but refused to do so, the work separation was a voluntary leaving that occurred that day. Although the employer made claimant's final paycheck available on June 30, 2022 and claimant believed he had been laid off that day, the record shows that the employment relationship was severed the previous day when claimant voluntarily quit. The work separation is therefore properly considered a voluntary leaving that occurred on June 29, 2022.

Voluntary Leaving. 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). "[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 order under review concluded that claimant's safety concern about the truck with the ABS issue was a reason of such gravity that he had no reasonable alternative but to leave work. Order No. 22-UI-203755 at 3. The record does not support this conclusion.

Claimant's discovery of the ABS issue reasonably caused him concern, and if the employer insisted on him driving that truck without adequately addressing his concern, it would have constituted a grave situation. Instead, the employer gave claimant the alternative of driving a newer truck that had no known safety issues while the employer addressed his concerns over the other truck. Claimant contended this would have posed an unreasonable hazard to his coworkers if they had to drive the truck with the ABS issue in the meantime, even if just to a mechanic. However, it later came to light that the employer's mechanic had made the alterations to the ABS system in accordance with generally accepted practices, and the truck subsequently passed a government inspection in that condition. The record shows that the coworkers were aware of the condition of the truck, but were unconcerned and continued to drive it. If claimant had consulted these coworkers, the mechanic, or the Department of Transportation, or allowed the employer time to do so, he would have learned that they did not share his safety concerns.

Claimant did not offer an explanation of how quitting did more to prevent others from driving the truck at issue, than his driving the newer truck while monitoring the employer's response to his complaint would have. Therefore, it is not evident how claimant derived any benefit from quitting work, even if he did so due to what he incorrectly believed were risks to the safety of his coworkers. *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). Accordingly, claimant has not shown that he had a reason for quitting that was of such gravity that he had no reasonable alternative but to leave work when he did.

Therefore, claimant voluntarily left work without good cause. He is disqualified from receiving benefits effective June 26, 2022.

DECISION: Order No. 22-UI-204584 is set aside, as outlined above.

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

DATE of Service: December 21, 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.