

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0013

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 160007). The employer filed a timely request for hearing. On November 28, 2022, ALJ Smith conducted a hearing, and on December 5, 2022 issued Order No. 22-UI-208811, setting aside decision # 160007 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective April 18, 2021. On December 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Bing Corporation employed claimant from August 3, 2020 until April 22, 2021. Claimant worked as a food and beverage manager at the employer's hotel.

(2) Claimant visited his father on a weekly basis for five to six hours at a time. Claimant's father did not require a full time caregiver, but claimant did assist his father with transportation and support at medical appointments. Claimant's father was in his 60s and overweight, which made him more vulnerable to experience severe symptoms if he contracted COVID-19. However, claimant's father was vaccinated against COVID-19.

(3) Claimant was not at a high risk for severe symptoms if he were to contract COVID-19 and did not live with anyone who was at a high risk of severe symptoms from COVID-19. Claimant had access to vaccines against COVID-19.

(4) The employer provided employees with masks, which claimant used, but the employer was not able to enforce all customers wearing masks at all time. The employer also had social distancing policies, but likewise was unable to enforce them at all times.

(5) The employer would house individuals who tested positive for COVID-19 and were quarantining within the hotel. Claimant was concerned that these customers would not follow safety procedures, but was not aware of how recently the hotel had housed anyone who was quarantining.

(6) Claimant was concerned about the possibility of contracting COVID-19 at work and passing it to his father. Claimant discussed this concern with his managers, and together they attempted to develop a plan to address these concerns. Transcript at 16-17. However, given the nature of claimant's position and the employer's business, neither claimant nor his managers were able to develop a mutually agreeable plan.

(7) Around early April 2021, the employer announced that they would be reopening the hotel's buffet. Claimant believed that this would attract additional people to the hotel, and this would increase claimant's potential exposure to the COVID-19 virus.

(8) On April 8, 2021, claimant provided the employer with a two-week notice of his resignation. Claimant's resignation letter stated he was resigning because he wanted to leave the restaurant and hospitality industry. Exhibit 1.

(9) On April 22, 2021, claimant quit working for the employer.

CONCLUSIONS AND REASONS: Claimant 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.

Claimant voluntarily left work because he wanted to work in another industry and, at least partially, because he was concerned about contracting COVID-19 and passing it along to his father. Claimant did not meet his burden to show that his concern about contracting COVID-19 was a situation of such gravity that no reasonable and prudent person would have continued to work for the employer. The claimant began working for the employer several months after the start of the COVID-19 pandemic. The employer provided claimant with personal protective gear that helped mitigate the risk of claimant contracting COVID-19. Additionally, claimant had access to vaccines that could further mitigate against this risk. The employer also implemented social distancing policies which, though they were not always followed, also mitigated some of the risk of exposure. Further, while the employer did occasionally house individuals that had tested positive for COVID-19, there is no evidence that claimant was ever required to interact with these individuals or that this occurred around the time that claimant quit. Given the precautions available to claimant, he has not shown that he faced a significant risk of contracting COVID-19. Claimant believed that this risk of exposure would increase when the employer reopened their buffet, but claimant quit before this actually occurred.

The potential that claimant would pass the COVID-19 virus along to his father is even further attenuated. Claimant did not live with his father or anyone else that was at a high risk for severe symptoms from COVID-19. Claimant's contact with his father was isolated to one weekly visit. Further, though claimant's father was at higher risk of severe symptoms, were he to contract COVID-19, this risk was mitigated because claimant's father was vaccinated against COVID-19. This lowered his risk of contracting and experiencing the severe symptoms that gave claimant concern. Claimant also could have instituted additional safety precautions during his weekly visits to further minimize the risk that is father become infected. Given the precautions that were in place, as well as the additional precautions available to claimant, claimant has not shown that the risk of contracting and spreading COVID-19 to his father was of such gravity that no reasonable and prudent person would have continued to work for the employer. Accordingly, claimant has not shown that he had good cause for quitting work when he did and is disqualified from benefits based on the work separation.

DECISION: Order No. 22-UI-208811 is affirmed.

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

DATE of Service: February 16, 2023

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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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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