

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0070

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 18, 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 October 23, 2022 (decision # 141456). Claimant filed a timely request for hearing. On December 27, 2022, ALJ D. Lee conducted a hearing at which the employer failed to appear, and on January 6, 2023 issued Order No. 23-UI-211943, affirming decision #141456. On January 10, 2023, 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. Claimant's argument was considered to the extent it was based on the record.

FINDINGS OF FACT: (1) Nature Bake employed claimant in sanitation and janitorial work at their bakery from January 27, 2019 until October 30, 2022.

(2) On October 21, 2022, claimant's vehicle was damaged beyond repair in a collision he accidentally caused. Claimant believed he was insured against liability for such a collision, but discovered after the collision that he was not insured. When the police learned of claimant's lack of liability insurance coverage while investigating the collision, they informed him that his driver license would likely be suspended as a result. Claimant could not afford to rent or purchase a new vehicle, and did not have sufficient credit to borrow the money to do so.

(3) Beginning October 22, 2022, claimant took public transportation to and from work. In each direction, claimant was required to walk in excess of three miles because neither his home nor the workplace was near the only available route, then take both a bus and light rail, which took several

hours. Claimant commuted to and from work in this way for four work days. Prior to losing his car, claimant had no difficulty commuting by using his own car.

(4) After the collision, claimant advised the employer of the loss of his car and the difficulty it presented in getting to and from work. The employer only offered to assist with advising him on how to better use public transportation, but claimant was already using the most efficient means. Claimant asked 16 coworkers about carpooling with them, but none were able to accommodate him. Claimant did not seek to modify his work schedule to fewer days per week because the employer had a “rigid policy” against such schedule changes and claimant’s previous attempts to do so were “always denied.” Audio Record at 22:08 to 22:46.

(5) On October 30, 2022, claimant emailed the employer prior to the start of his shift that he was resigning with immediate effect due to his inability to commute to and from the workplace within reason. Claimant’s driver license had not been suspended as of this date.

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 voluntarily quit work without good cause because although claimant faced a grave situation due to the loss of his personal transportation, he had the reasonable alternative of asking the employer to modify his work schedule. Order No. 23-UI-211943 at 3. The record does not support this conclusion.

Claimant quit because, without a car or other reasonable means of transportation, it was too difficult for him to commute to and from work. The loss of claimant’s car because of a collision was accidental. Audio Record at 12:48 to 13:05. Although claimant expressed concern over being told his driver license would be suspended for having caused a collision without being covered by liability insurance as required by law, claimant testified his license had not been suspended at the time he quit. Audio Record at 26:45 to 27:08. Therefore, it was claimant’s lack of private vehicle transportation, rather than a license suspension imposed as punishment for a violation of law, that caused claimant to quit work when he did. Accordingly, the situation claimant faced when he quit work was not caused by claimant’s deliberate actions or a violation of law.

Though claimant had no difficulty commuting to the worksite for more than three years by car, this was not the case when claimant’s only option was public transportation. Neither claimant’s home nor the worksite were within reasonable proximity of the only available public transportation route, requiring claimant to walk in excess of three miles in each direction. Combined with having to take a bus and transfer to light rail, it took claimant several hours to get both to and from work each day. Having only

this commuting option constituted a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Further, claimant had no reasonable alternative but to leave work. He did not have money to fix his car, which had been “totaled,” and did not have money or access to credit with which to purchase or rent another car. Audio Record at 12:52 to 13:14, 26:08 to 26:32. Claimant spoke to 16 coworkers on his shift about carpooling with them, but none were able to accommodate him. He apprised the employer of his situation, but the employer offered no alternatives to continuing to take public transportation to and from his scheduled shifts. The record does not show that requesting a leave of absence would have ultimately improved the situation, as doing so would have only temporarily suspended claimant’s need to commute while he was off work without pay. Though claimant testified he wished he had asked the employer to schedule his work hours over fewer days to reduce the number of commutes, the record shows such a request would likely have been futile based on claimant’s testimony that the employer denied every such request in the past. Audio Record at 22:22 to 22:48. Alternatives to quitting may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). Therefore, claimant explored all reasonable alternatives to quitting to no avail.

For the above reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 23-UI-211943 is set aside, as outlined above.

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

DATE of Service: March 8, 2023

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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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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