

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0102

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 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 July 31, 2022 (decision # 83918). Claimant filed a timely request for hearing. On December 27, 2022, ALJ Lewis conducted a hearing at which the employer failed to appear, and on December 28, 2022 issued Order No. 22-UI-211014, affirming decision # 83918. On January 17, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his January 17, 2023 argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Because claimant's March 14, 2023 argument was not received by EAB within the time period allowed under OAR 471-041-0080(1), the argument was not considered by EAB when reaching this decision. OAR 471-041-0080(2)(b). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Troon Golf LLC employed claimant as a controller from February 28, 2022 until August 3, 2022.

(2) When the employer offered claimant the position, claimant understood that it could be performed primarily remotely. He nonetheless was required to relocate from Salem to Bend, Oregon, where the employer was located, approximately 130 miles away.¹ After starting the job, claimant believed that he needed to work primarily in-person to accomplish the responsibilities of the position.

¹ EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(3) In May 2022, claimant's grandmother, who had been living in an assisted living facility, was hospitalized. She thereafter resided in a rehabilitation facility in Salem. Claimant would travel to the facility every other weekend to assist in his grandmother's care, as he was dissatisfied with the care provided by the facility due to errors they made, including medication errors.

(4) On July 13, 2022, claimant told the employer that he was quitting to help care for his grandmother, effective August 3, 2022. At this time, claimant was sharing caregiving duties with his mother. Claimant's mother was not able to perform the care the grandmother needed without claimant's assistance. Claimant was providing an average of 30 hours of care per week.

(5) On August 3, 2022, claimant stopped working for the employer and moved back to Salem to help care for his grandmother.

(6) Prior to quitting, claimant did not request a leave of absence from the employer because he believed he had not worked long enough to be entitled to family leave under applicable law. He did not ask for other types of leave, or to work remotely, because he did not think the employer would grant the requests.

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).

Claimant voluntarily quit working for the employer because he felt he needed to move back to Salem to care for his ailing grandmother. The order under review concluded that claimant voluntarily quit work without good cause because the notice period claimant offered to work when he resigned proved that his grandmother's need for claimant to provide care was not sufficiently urgent as to constitute a grave situation, and claimant had the reasonable alternative to quitting of asking the employer for leave or for permission to work remotely while he provided care. Order No. 22-UI-211014 at 2. The record does not support these conclusions.

Claimant testified that at the time he told the employer he was resigning, he had been providing an average of 30 hours per week of care to his grandmother despite living a significant distance away in a different city. Audio Record at 17:50 to 18:08. Though his grandmother was in a rehabilitation facility, claimant testified that he observed several incidents that led him to conclude that the facility was providing inadequate care, and that he and his mother needed to take turns being present to supervise and supplement her care. Audio Record at 14:00 to 15:06. In the absence of evidence to the contrary, the record shows that claimant's grandmother required care from claimant beyond what the facility and claimant's mother could provide. Since providing this care conflicted with claimant's work schedule, particularly given his distance from the facility, claimant faced a grave situation such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Further, pursuing alternatives to quitting would likely have been futile. Claimant testified that he accepted his position based on the employer's representation that the job could be performed remotely. Audio Record at 18:15 to 18:35. However, once he began the job, he realized that the nature of the work necessitated his presence at the worksite, and felt that he could not have performed the job adequately working remotely full-time from Salem. Audio Record at 18:36 to 18:55. He also testified he considered requesting leave or a part-time schedule, but decided he was not entitled to leave under the law since he had not worked for the employer long enough. Audio Record at 19:45 to 19:51. Claimant did not ask the employer about these alternatives because he was "new" and felt that the requests "would not have gone over very well." Audio Record at 21:30 to 22:22. 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). In the absence of evidence to the contrary, claimant's testimony established that, more likely than not, pursuing these alternatives would have been fruitless. Accordingly, claimant had no reasonable alternative but to voluntarily quit work.

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

DECISION: Order No. 22-UI-211014 is set aside, as outlined above.

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

DATE of Service: March 16, 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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