

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0231

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 19, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 5, 2022 (decision # 153423). Claimant filed a timely request for hearing. On February 1, 2023, ALJ Amesbury conducted a hearing, and on February 2, 2023 issued Order No. 23-UI-214686, affirming decision # 153423. On February 17, 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 him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Umpqua Health Management LLC employed claimant as their Vice President for Quality and Health Equity from August 20, 2018 until June 8, 2022. At the beginning of his employment, claimant worked at the employer's offices in Roseburg, Oregon.

(2) Beginning in 2020, due to the COVID-19 pandemic, the employer permitted claimant to work primarily remotely from his home in Lake Oswego, Oregon, which was approximately 170 miles from the employer's offices. Fully remote work was available to claimant from the fourth quarter of 2021 through the week of June 5, 2022. Prior to switching to fully remote work in 2021, claimant had rented an apartment in Roseburg so that he could work in the employer's office in that city. As of June 2022, claimant did not rent or own any property closer to the employer's Roseburg office than his home in Lake Oswego.

(3) On June 7, 2022, the employer presented claimant with a performance improvement plan (PIP) that outlined numerous ways in which the employer was dissatisfied with claimant's work performance, and listed specific actions claimant needed to take to improve his performance. Claimant was given 24 hours to review and sign the PIP, with his signature acknowledging only that he understood the actions he needed to take to improve his performance, not that he agreed with the employer's stated reasons for their dissatisfaction with his performance. Claimant disagreed strongly with the employer's stated reasons for their dissatisfaction with his performance and proposed corrective actions, and requested additional time to provide a rebuttal to the PIP, which the employer denied. The employer did not intend to discharge claimant at that time, even if he refused to sign the PIP.

(4) The terms of the PIP required claimant to work in person at the Roseburg office every Wednesday, beginning June 15, 2022. Beginning in September 2022, claimant was required to work Tuesday through Thursday of each week in that office.

(5) On June 8, 2022, claimant quit working for the employer because he disagreed with the employer's assertions regarding his work performance in the PIP and felt that signing it would constitute agreement with those assertions, and because he felt the commute to Roseburg would have been unreasonable.

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 quit work because he disagreed with the employer's reasons for instituting the PIP, and because the new in-person work requirement would result in a commuting distance he felt was unreasonable. The order under review concluded that claimant quit work without good cause, in part because the commuting requirement did not constitute a grave situation. Order No. 23-UI-214686 at 3. The record does not support this conclusion.

Claimant's disagreement with the reasons that the employer gave for instituting the PIP did not constitute a grave situation. Claimant felt that the employer was requiring him to sign the PIP as a condition of his continued employment and thereby acknowledge that its assertions about deficiencies in his performance were true. Transcript at 21-22. Claimant was unable to identify any provision in the document that stated that his signature constituted such an acknowledgement. *See* Transcript at 12-16. In fact, the PIP stated, "Your signature on this document is your acceptance and acknowledgement of your obligation to fulfill all the terms of the Plan and all of your job duties." Exhibit 1 at 12. Additionally, the employer's witness testified that claimant was not told that he would be discharged if he failed to sign the PIP. Transcript at 32. Therefore, more likely than not, claimant was not required to sign the PIP or admit or acknowledge assertions about his work performance with which he disagreed. Accordingly, claimant's disagreement with the employer about his work performance and with being asked to sign the

PIP was not a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

However, claimant also quit because the PIP required him to begin commuting to work in person each Wednesday, beginning the following week. The commute would have involved a distance of 170 miles each way. Transcript at 11. This presumably would have added five to six hours of driving to claimant's workday, and possibly the added expense of a hotel room if claimant drove to Roseburg after work on the preceding Tuesday. Renting or leasing an apartment by the month in Roseburg as claimant had done prior to working remotely would have been financially impractical if the apartment was needed only one night per week. Moreover, having an apartment would not have changed the necessity for claimant to drive to and from Roseburg at least once per week. Even though claimant may have been willing to undertake such an arrangement in order to initially secure this employment in 2018, such prior willingness did not render the commute objectively reasonable after having given up his apartment to work remotely. Once granted the ability to work fully remotely in late 2021 after the COVID-19 pandemic had subsided, the employer's insistence in June 2022 that claimant immediately return to some in-person work, requiring a commute of 170 miles each way every week, constituted a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Further, claimant did not have reasonable alternatives to leaving work. The employer's witness suggested that the employer would have been open to negotiations about the in-person work requirement had claimant asked. Transcript at 32-33. However, the extent of what the employer might have considered in such a negotiation appeared limited to allowing claimant to work in person on other days of the week *in addition* to every Wednesday, when his attendance at a specific meeting in Roseburg was required and apparently non-negotiable. Transcript at 33. Claimant felt that any attempts at negotiation would have been futile, given the employer's refusal to allow claimant additional time merely to review the PIP and offer a response to it. Transcript at 22. More likely than not, any attempt by claimant to get the employer to agree to allow him to continue working entirely remotely, thus avoiding the commute, would have been fruitless in light of the employer's dissatisfaction with claimant's performance and given the tone and substance of the PIP's demands. 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). Accordingly, this alternative would have been futile, and claimant had no other reasonable alternatives to quitting.

For these 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-214686 is set aside, as outlined above.

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

DATE of Service: April 7, 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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