

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0254

Request to Reopen Allowed
Reversed
No Disqualification

PROCEDURAL HISTORY: On August 17, 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 July 24, 2022 (decision # 91325). Claimant filed a timely request for hearing. On September 20, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 30, 2022. On September 30, 2022, claimant failed to appear for the hearing and ALJ Clemons issued Order No. 22-UI-203690, dismissing claimant's request for hearing due to his failure to appear. On October 12, 2022, Claimant filed a timely request to reopen the September 30, 2022 hearing.

On January 30, 2023, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on February 7, 2023 issued Order No. 23-UI-215080, allowing claimant's request to reopen the September 30, 2022 hearing, canceling Order No. 22-UI-203690, and affirming decision # 91325 on the merits. On February 24, 2023, claimant filed an application for review of Order No. 22-UI-203690 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to reopen the September 30, 2022 hearing is **adopted**. The remainder of this decision addresses claimant's separation from employment.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Sundial Logistics, LLC employed claimant as an order selector from April 21, 2021 until July 27, 2022.

(2) In approximately November 2021, claimant suffered an injury at work for which he sought medical treatment. He retained an attorney and filed a claim for workers' compensation. Claimant was off work

for a period while he recuperated, but when he was physically able to return to full-time work, the employer cut his hours from 40 to 20 per week.

(3) On July 26, 2022, the employer proposed a settlement to the workers' compensation claim that included payment of claimant's medical bills, attorney fees, and monetary compensation to claimant for his injury, which claimant found reasonable. In exchange, claimant would release the employer from all potential claims and agree to resign, effective the following day.

(4) Claimant wished to continue working for the employer, but felt he had to accept the settlement for financial reasons. Due to claimant's medical expenses and decreased earnings, he felt he was at imminent risk of homelessness if he did not accept the settlement. Claimant's attorney attempted to negotiate the removal of the resignation requirement from the settlement agreement, to no avail. Claimant signed the settlement agreement.

(5) On July 27, 2022, claimant intended to report to work but was told by his attorney that the employer informed him that they did not want claimant to return to the worksite. Claimant did not work for the employer again.

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).

Claimant voluntarily quit work because the employer conditioned settlement of claimant's workers' compensation claim on his resignation. The order under review concluded that claimant quit without good cause because he did not face a grave situation, since he could have rejected the settlement to continue working for the employer. Order No. 23-UI-215080 at 4. The record does not support this conclusion.

Though claimant wanted to continue working for the employer, he felt he had little choice but to accept the employer's condition that he resign in order to receive a workers' compensation settlement to which he believed he was entitled. Claimant testified that after he filed his workers' compensation claim, the employer cut his hours from 40 to 20 per week "out of spite." Transcript at 38. The resulting decrease in earnings, combined with the expense of medical treatment, made claimant feel that he was "about to be homeless" due to difficulties paying his bills by the time the settlement was offered. Transcript at 36. The employer's reduction of claimant's work hours left claimant in a financially vulnerable position that increased his need to quickly accept a settlement offer rather than continue working while pursuing the claim to its conclusion (e.g. to trial) on potentially more favorable terms.

Under the circumstances, it would have been illogical for claimant to reject a settlement that he felt reasonably compensated him for his injury in order to continue working part-time for an employer who no longer wanted to employ him. Claimant faced mounting financial difficulties that placed him in

jeopardy of homelessness if he rejected the settlement. Claimant made efforts to maintain his employment by modifying the terms of the agreement, but the employer refused. Accordingly, claimant's need to immediately accept the settlement despite his disagreement with the provision requiring his resignation constituted a grave situation such that that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work as required by the terms of the settlement.

Further, claimant had no reasonable alternatives to leaving work. Financially, claimant did not have a reasonable alternative to accepting the employer's proposed settlement. The employer's desire to end claimant's employment by including the resignation condition in the settlement offer, and their refusal to negotiate that term, made any alternatives to quitting futile. Therefore, claimant had no reasonable alternatives to quitting work.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving benefits as a result of the work separation.

DECISION: Claimant's request to reopen the September 30, 2022 hearing is allowed. Order No. 23-UI-215080 is set aside, as outlined above.

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

DATE of Service: April 14, 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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