

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0295

Reversed & Remanded

PROCEDURAL HISTORY: On December 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 2, 2022 (decision # 150822). Claimant filed a timely request for hearing. On February 15, 2023, ALJ Nyberg conducted a hearing, and on February 23, 2023 issued Order No. 23-UI-216944, affirming decision # 150822. On March 8, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JNJ Corner Store employed claimant as a gas station attendant until October 4, 2022.

(2) Claimant and his brother lived together and shared expenses, including rent. Claimant and his brother lived and worked in Ontario, Oregon. In or around September 2022, claimant's brother lost his job. Around the same time, claimant's landlord raised claimant's rent by \$50 per week. The combined effect of these two developments significantly increased claimant's financial obligations.

(3) Claimant did not have another option for housing in the town that he lived. The next nearest town in which claimant could potentially find housing was 30 miles away, and claimant did not have a car. Audio Recording at 15:03 to 15:15.

(4) Claimant continued to work for the employer for four weeks following the changes in his financial obligations, but claimant struggled to make enough money to pay his rent and was concerned that he would soon become homeless. Audio Recording 13:01 to 13:13.

(5) On two occasions, claimant did not report to work and did not call to inform the employer that he would not be reporting to work. As a result of these absences, claimant averaged 32 hours per week during that period. Claimant asked the employer if he could work more hours, and the employer's response was "no response...just if I [claimant] wanted work just show up to work." Audio Recording at 14:04 to 14:11. Claimant did not inquire about a potential raise to help meet his financial obligations.

(6) On October 4, 2022, claimant quit work for the employer to move to Astoria.

CONCLUSIONS AND REASONS: Order No. 23-UI-216944 is set aside and this matter remanded for further development of the record.

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 quit his position with the employer to move, due to concerns that he would become homeless after his rent was raised and his brother lost his job. The order under review concluded that claimant did not meet his burden to show that this constituted good cause because claimant did not exercise reasonable alternatives prior to quitting. Order No. 23-UI-216944 at 2. The record as developed does not support this conclusion, and further inquiry is required to determine whether claimant’s change in financial obligations constituted good cause.

The record shows that claimant’s primary motivation for quitting work when he did was a concern that he would soon become homeless and the need to secure housing he could reliably afford. Claimant’s brother’s loss of employment, as well as claimant’s increase in rent, changed his financial obligations such that that he could no longer afford his current residence. The ALJ concluded that claimant could have worked more hours or asked about a raise to meet these financial obligations and therefore claimant did not pursue reasonable alternatives. Order No. 23-UI-216944 at 2. However, further inquiry is needed as to whether either of these options were viable. On remand, the ALJ should develop the record to determine if additional hours were possible and whether working them would have been sufficient to meet claimant’s financial obligations. The record shows that claimant did not report for work on two occasions but it is not clear whether working these days would have allowed claimant to meet his obligations and whether he lost additional hours because of these absences. Additionally, further inquiry is required into whether seeking a raise was viable as well as whether it would have been sufficient to meet claimant’s new financial obligations. The ALJ also should inquire into alternative housing arrangements in Ontario, including whether additional or alternative roommates could have allowed claimant to maintain his employment without becoming homeless. Lastly, the ALJ should inquire into how claimant’s financial situation was improved by relocating to Astoria, as it is unclear from the record whether claimant had a more affordable housing option, more lucrative job opportunities, or similar, in Astoria.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because

further development of the record is necessary for a determination of whether claimant voluntarily quit with good cause, Order No. 23-UI-216944 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-216944 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 18, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-216944 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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