

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0471

Reversed
Disqualification

PROCEDURAL HISTORY: On January 20, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation (decision # 91616). The employer filed a timely request for hearing. On March 29, 2023, ALJ Buckley conducted a hearing and issued Order No. 23-UI-220384, affirming decision # 91616. On April 18, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) General Parts Distribution, LLC employed claimant from May 27, 2022 until December 30, 2022.

(2) Claimant was a part time employee who worked an average of 6 hours per week for the employer. During the time that claimant worked for the employer, he also worked 40 hours a week for another employer. Both jobs were located in Gladstone, Oregon. Claimant lived in Camas, Washington, which is approximately a 45-minute commute from Gladstone.

(3) In December 2022, claimant was laid off from his full time position with the other employer due to a lack of work. Following this, claimant provided the employer with notice that he intended to quit because he "...didn't see a reason to keep working just 6 hours a week, 3 hour shifts, driving from Camas all the way to Gladstone, [when he] would have basically grossed 20 dollars after paying for gas." Audio Recording 15:38 to 15:54.

(4) Prior to providing his notice, claimant did not inquire as to whether he could work additional hours with the employer. The employer had additional work available, and would have permitted claimant to work up to 40 hours per week.

(5) On December 30, 2022, claimant quit working for the employer.

CONCLUSION AND REASONS: Claimant quit work without 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). 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.

The order under review concluded the claimant quit working the employer with good cause. However, the record does not support this conclusion.

The record shows that claimant quit his position with the employer because he no longer wished to commute to Gladstone after he was laid off from his other job. At hearing, claimant offered two explanations for why he quit work. The first was that his position with the employer was a temporary position, and that he had fully completed the work that he was hired to do. Audio recording at 15:25 to 15:33. The employer’s witness contradicted this, stating that the employer did not consider claimant a temporary employee, and that when claimant quit he was offered continuing work, up to 40 hours a week. Audio record 18:09 to 18:24; 19:08 to 19:29. Here, the evidence as to whether claimant was a temporary employee is equally balanced, and the record does not show whether claimant was hired as a temporary or a permanent employee. However, it is uncontested that when claimant quit, the employer had continuing work available to claimant, up to 40 hours per week.

Claimant’s second explanation for quitting was that after he was laid off from his other job, he no longer wished to commute to Gladstone because he did not believe he would be making enough money to justify the commute. Audio Recording at 15:38 to 15:54. The employer’s witness also testified that when claimant quit, he told the employer that he did so because he did not want to continue to commute to Gladstone. Audio Recording at 19:10 to 19:19. Given the consistency between claimant’s testimony and of the information provided to the employer, the record shows that claimant quit working for the employer because, after he was laid off from his other job, he did not believe he would make enough money from the employer to justify the commute.

However, the employer’s witness testified that they had up to 40 hours per week available for claimant. Audio Recording at 20:11 to 20:19. While the parties disputed whether the employer offered claimant additional hours, claimant admitted that he did not inquire about additional hours before voluntarily quitting. Audio Recording at 19:16 to 19:23; 23:17 to 23:30. Had he done so, the employer would have been able to offer claimant more work.

The order under review concluded that, “Expecting claimant to convert a part-time temporary position that he agreed to perform to assist employer to a permanent full time position was not a reasonable

alternative to voluntarily quitting his job.” Order 23-UI-220384 at 2. However, working additional hours and therefore earning more money per shift likely would have addressed claimant’s concern that he would not make enough money from the employer to justify the commute. Working additional hours therefore was a reasonable alternative to quitting.

Claimant therefore quit working for the employer without good cause and is disqualified from receiving benefits effective December 25, 2022.

DECISION: Order No. 23-UI-220384 is set aside, as outlined above.

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

DATE of Service: May 23, 2023

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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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