

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0532

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 110510). On April 14, 2022, decision # 110510 became final without claimant having filed a request for hearing. On May 3, 2022, claimant filed a late request for hearing on decision # 110510. ALJ Kangas considered claimant's request, and on August 9, 2022 issued Order No. 22-UI-200161, dismissing claimant's request for hearing on decision # 110510 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 23, 2022. On August 29, 2022, Order No. 22-UI-200161 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 21, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 22-UI-200161 with EAB. On January 14, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding the matter because the questionnaire response was late.

On February 1, 2023, EAB issued EAB Decision 2023-EAB-0114,¹ dismissing claimant's late application for review of Order No. 22-UI-200161 without prejudice. On February 9, 2023, claimant filed a request for reconsideration of EAB Decision 2023-EAB-0114. On March 17, 2023 EAB issued EAB Decision 2023-EAB-0114-R,² allowing claimant's request for reconsideration, allowing claimant's late application for review of Order No. 22-UI-200161, allowing claimant's late request for hearing on decision # 110510, and remanding the matter for a hearing on the merits of decision # 110510.

¹ EAB Decision 2023-EAB-0114 was issued in triplicate with EAB Decisions 2023-EAB-0115 and 2023-EAB-0116, two cases with which it had been consolidated.

² EAB Decision 2023-EAB-0114-R was issued in triplicate with EAB Decisions 2023-EAB-0115-R and 2023-EAB-0116-R, two cases with which it had been consolidated.

On April 10, 2023, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on April 18, 2023 issued Order No. 23-UI-222457 affirming decision # 110510. On May 7, 2023, claimant filed an application for review of Order No. 23-UI-222457 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a written statement claimant submitted with his appellant questionnaire response, which was considered as additional evidence in 2023-EAB-0114, and had been marked as EAB Exhibit 1, and a copy provided to the parties with that decision. The written statement being provided to the parties with this decision. Any party that objects to our considering EAB Exhibit 1 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 exhibit will remain in the record.

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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). Other than the information contained in EAB Exhibit 1, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACTS: (1) The Pint Pot Public House employed claimant as a cook from June 2019 until June 6, 2020. The employer operated a pub located in Eugene, Oregon.

(2) On or about mid-April 2020, the employer closed for two weeks due to restrictions resulting from the COVID-19 pandemic. In early May 2020, the employer partially reopened. However, operations were limited to lunch and dinner take-out only. From that point forward, the employer operated with only two workers per shift: a cook, and someone to answer the telephone to receive take-out orders. Claimant was one of five cooks that the employer employed. Claimant competed for shifts with the other cooks and, as a result, received only about four hours of work per week.

(3) Because of the employer's mid-April 2020 closure and limited operations beginning in early May, claimant "pretty much didn't get paid for a month and a half." Audio Record at 9:28. Claimant experienced difficulty paying his bills, including his rent.

(4) Claimant asked his manager for more hours but the manager could not guarantee claimant would receive more hours. Claimant looked for work with other restaurants and bars, but other restaurants and bars in Eugene were not hiring due to limited operations resulting from the COVID-19 pandemic.

(5) By the start of June 2020, claimant was in financial distress, unable to pay his rent in Eugene. Claimant could live with his parents in Bend, Oregon without having to pay rent. Claimant decided to quit working for the employer and move in with his parents in Eugene. Claimant quit working for the employer on June 6, 2020 for that reason. Claimant's decision to quit was also motivated by the fact that, on June 6, 2020, the employer had an employee play bagpipes outside the pub while racial justice protests were occurring nearby, which claimant believed would antagonize protesters.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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) (December 23, 2018). “[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 that claimant left work without good cause. Order No. 23-UI-222457 at 3-4. The record does not support this conclusion.

Claimant had good cause to leave work when he did to move in with his parents in Bend rather than be unhoused. Because of the employer’s closure and limited operations after reopening, claimant “pretty much didn’t get paid for a month and a half.” Audio Record at 9:28. As a result, claimant experienced financial distress and was unable to pay his rent where he lived in Eugene. Claimant’s difficult financial situation presented him with a grave situation. To address the gravity of the situation, claimant quit working for the employer and moved in with his parents in Bend where he could live rent-free. Quitting work was beneficial to claimant because, although it reduced his income from work to zero, that income had been insufficient to pay for housing, and quitting enabled him to eliminate the monthly rental payment that had placed him in financial distress. *See Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work).

Further, the record shows that claimant pursued reasonable alternatives to leaving work. Before he quit, claimant asked his manager for more hours, but the manager could not guarantee claimant would receive more hours. More likely than not, due to claimant’s extremely low income, it would have been futile for claimant to look for affordable housing in Eugene that would have enabled him to stay in Eugene and not quit. Given that claimant had had virtually no income for six weeks, the weight of the evidence supports that finding alternative housing in Eugene that claimant could afford was too unlikely for it to have been a reasonable alternative to quitting. A reasonable and prudent person in claimant’s position would have done as claimant did and opted to live rent-free with his parents.

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

DECISION: Order No. 23-UI-222457 is set aside, as outlined above.

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

DATE of Service: June 12, 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

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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