

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0563

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 24, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective September 11, 2022 (decision # 85526). Claimant filed a timely request for hearing. On April 26, 2023, ALJ Nyberg conducted a hearing, and on May 10, 2023 issued Order No. 23-UI-224480, modifying decision # 85526 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective September 4, 2022. On May 15, 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Nike, Inc. employed claimant from approximately 2012 until September 9, 2022, most recently as an enterprise risk management professional.

(2) In early 2022, claimant became dissatisfied with his work environment, largely related to disagreements over managerial decisions. This dissatisfaction persisted for the remainder of claimant's employment.

(3) In spring 2022, claimant took a medical leave of absence from work due to depression and anxiety, which claimant believed was related to stress from the work environment. After his return to work, claimant's doctor suspected an autism spectrum disorder and recommended that claimant seek accommodations such as remote or hybrid work. Claimant did not seek such accommodations because he was "not comfortable" discussing his diagnoses with his supervisor. Audio Record at 18:58 to 20:32.

(4) In July 2022, claimant began looking for other work due to his dissatisfaction with the employer's work environment. He entered negotiations for contract work with another company. The other company agreed that claimant would begin working for that company on a self-employed, contract basis "after [claimant] had left [the employer]. . . at the end of September." Audio Record at 14:07 to 14:32. A written contract was not executed at that time.

(5) On September 9, 2022, claimant quit working for the employer in anticipation of beginning the contract work for the other company.

(6) If claimant had not quit work on September 9, 2022 to begin the contract work, claimant would have continued to work for the employer, though he may have sought another period of medical leave.

CONCLUSIONS 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. Per OAR 471-030-0038(5)(b)(G), leaving work without good cause includes leaving work for self-employment.

Claimant quit work because he had agreed to do so in order to begin self-employment. While claimant was dissatisfied with aspects of his work for the employer, the record shows that this dissatisfaction was only a motivating factor in claimant's search for alternate employment, rather than his cause for quitting when he did. Claimant testified that he would have quit working for the employer when he did to accept the offer of self-employment even in the absence of dissatisfaction with the employer's work environment because "[the self-employment] job was for substantially more pay and was a more senior position[.]"¹ Audio Record at 20:45 to 21:32. Further, the record shows that if claimant had not been offered the self-employment work at that time, claimant would have remained working for the employer an additional period of time. Claimant testified that had he not received the offer of self-employment by September 2022, he would not have quit, but instead would have been "probably looking at taking more mental health leave." Audio Record at 13:30 to 13:55. As claimant has not proven by a preponderance of evidence that he quit work when he did because of the work environment or its impact on his mental health, those reasons cannot be considered under the "good cause" analysis set forth in OAR 471-030-0038(4). Instead, the record shows that claimant quit work when he did to engage in self-employment, which is not good cause under OAR 471-030-0038(5)(b)(G).

For these reasons, claimant left work without good cause and is disqualified from receiving unemployment insurance benefits effective September 4, 2022.

¹ Though claimant expressed a desire to "correct" this testimony in his written argument to state that he would have quit in September 2022 for mental health reasons regardless of the offer of self-employment, EAB's review of the evidence is limited to the record at hearing. Claimant's Written Argument at 3.

DECISION: Order No. 23-UI-224480 is affirmed.

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

DATE of Service: June 21, 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.

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