

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0637

Affirmed
Request to Reopen Allowed
Late Request for Hearing Allowed
Disqualification

PROCEDURAL HISTORY: On October 28, 2020, 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 November 24, 2019 (decision # 135030). On November 17, 2020, decision # 135030 became final without claimant having filed a request for hearing. On July 25, 2022, claimant filed a late request for hearing on decision # 135030. On December 12, 2022, ALJ Enyinnaya conducted a hearing, and on December 19, 2022 issued Order No. 22-UI-210272, dismissing claimant's request for hearing as late without good cause and leaving decision # 135030 undisturbed. On January 4, 2023, claimant filed a timely application for review of Order No. 22-UI-210272 with the Employment Appeals Board (EAB). On February 9, 2023, EAB issued EAB Decision 2023-EAB-0048, reversing Order No. 22-UI-210272 and remanding the matter for further proceedings.

On February 14, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 28, 2023. On February 28, 2023, claimant failed to appear at the hearing, and on March 2, 2023 ALJ Enyinnaya issued Order No. 23-UI-217675, dismissing claimant's request for hearing due to his failure to appear. On March 9, 2023, claimant filed a timely request to reopen the February 28, 2023 hearing. On May 16, 2023, ALJ Enyinnaya conducted a hearing, and on May 24, 2023 issued Order No. 23-UI-225885, allowing claimant's request to reopen the February 28, 2023 hearing, allowing claimant's late request for hearing on decision # 135030, and affirming decision # 135030 on the merits. On June 3, 2023, claimant filed an application for review of Order No. 23-UI-225885 with EAB.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portions of the order under review allowing claimant's request to reopen the February 28, 2023 hearing

and claimant's late request for hearing on decision # 135030 are **adopted**. The rest of this decision addresses claimant's work separation.

FINDINGS OF FACT: (1) Cascade Cycle Boats employed claimant as a machinist from approximately February 2015 until November 27, 2019.

(2) In October 2019, claimant received an offer to do lighting design for Ferguson Works. Claimant would be paid \$1,300 per month on a self-employed, contract basis, with the possibility of eventually being offered traditional employment. Claimant was to begin the lighting design contract work in mid-December 2019.

(3) On or about November 6, 2019, claimant notified the employer he was quitting effective November 27, 2019. Claimant resigned in order to accept the offer of work from Ferguson Works.

(4) On November 27, 2019, claimant stopped working for the employer as planned.

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 in order to begin self-employment. He testified that in the absence of the offer of contract work from Ferguson Works, he would not have quit working for the employer. Transcript at 33. At hearing, he advanced no other reasons for quitting and did not express dissatisfaction with his work for the employer. Claimant understood the work with Ferguson Works to be that of a "freelance contractor" who was paid \$1,300 per month without regard to the number of hours worked, that he would receive a tax form 1099, and that he would be responsible for paying any taxes associated with the work. Transcript at 32-34. Claimant believed that the contract work might lead to an offer of traditional employment, but there was no agreement as to how long claimant might work as an independent contractor before such an offer would be made, and claimant speculated it could have been as long as six months. Transcript at 33. Accordingly, the record shows that claimant left work for self-employment, and therefore did so without good cause pursuant to OAR 471-030-0038(5)(b)(G).

Because claimant voluntarily quit work without good cause, he is disqualified from receiving unemployment insurance benefits effective November 24, 2019.

DECISION: Order No. 23-UI-225885 is affirmed.

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

DATE of Service: July 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

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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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