

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0652

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 5, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective March 19, 2023 (decision # 153552). Claimant filed a timely request for hearing. On May 23, 2023, ALJ Lewis conducted a hearing at which the employer failed to appear, and issued Order No. 23-UI-225823, affirming decision # 153552. On June 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party 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 her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. The record does not show that any portion of the hearing or the order under review “call[ed] into question [claimant’s] character or [her] integrity” as she alleged. Claimant’s Written Argument at 3. The order under review correctly stated that OAR 471-030-0038(4) (September 22, 2020) required, in order to find that a claimant left work with good cause, that the claimant show that their reason for leaving work was “such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” Order No. 23-UI-225823 at 2. The order’s conclusion that claimant’s reasons for leaving work did not meet this legal standard did not constitute a judgment regarding claimant’s character. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Retail Merchandising Services employed claimant as a merchandising representative from March 10, 2023 until March 25, 2023. Claimant worked part-time at an hourly rate of \$14.82.

(2) Claimant's customary occupation was that of a senior program manager working with software companies. Claimant most recently separated from long-term employment in that field in January 2023 and was seeking similar full-time work in March 2023. Claimant filed her initial claim for unemployment insurance benefits after that work separation.

(3) In March 2023, claimant began working for the employer part-time to supplement her income from unemployment insurance benefits while she sought full-time employment in her customary occupation.

(4) Claimant performed her work for the employer at a discount department store. Claimant was required to perform some of her work duties, such as collecting supplies and boxes from various parts of the store, prior to logging in for the start of her shift, and therefore was not paid for the time spent on these duties. Claimant did not enjoy the type of work she was performing and was dissatisfied both with the rate of pay and with being paid for less time than she actually worked.

(5) On March 19, 2023, claimant sent an email to the employer stating that she was resigning, effective March 26, 2023. In the email, claimant stated that she was quitting because it was not "the type of work [she] wanted to do to earn supplemental income." Audio Record at 7:55 to 8:45. Claimant did not cite her dissatisfaction at the rate of pay or not being paid for all time worked.

(6) Claimant did not work for the employer after March 25, 2023, as claimant did not request to work on March 26, 2023. By this date, claimant had another part-time job "lined up," and started this work on April 19, 2023. Audio Record at 22:42 to 22:56. The new job paid \$16.00 per hour.

CONCLUSIONS AND REASONS: Claimant voluntarily 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). "[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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left." OAR 471-030-0038(5)(a).

As a preliminary matter, voluntarily quitting work without good cause subjects a claimant to disqualification from benefits pursuant to ORS 657.176(2)(c), regardless of whether the work is part-time or full-time, whether the job or pay is commensurate with a claimant's education and experience, or whether a claimant took the job while already claiming unemployment insurance benefits. The fact that claimant began working for the employer as a means to supplement her income from unemployment insurance benefits does not alter the legal requirement that claimant be disqualified from benefits if she voluntarily quit working for the employer without good cause.

Claimant voluntarily quit working for the employer primarily because it was not the type of work she wanted to do. Claimant wrote in her resignation letter that, "While the training, processes, and documentation provided by [the employer] are thorough and a fairly accurate depiction of the role," that "it isn't the type of work I want to do to earn supplemental income." Audio Record at 8:20 to 8:39. Merely not wanting to do a certain type of work, particularly when the type of work to be done is accurately represented at the commencement of the employment relationship, is insufficient to establish that a situation of such gravity exists that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant's dislike of the work was partially attributed to having to perform some work tasks prior to logging in for the start of her shift and for which she was not paid. If the employer required this on an ongoing basis, it could potentially constitute a situation of such gravity that an individual could have no reasonable alternative but to leave work. However, claimant did not show that she had no reasonable alternatives to quitting in response to the situation, such as requesting that the employer pay her for all time worked, or making a complaint to governmental authorities responsible for the enforcement of wage and hour laws if they refused. Therefore, to the extent claimant voluntarily quit work because she did not like the type of work being performed or the employer's pay practices, she has not met her burden to show that these reasons constituted good cause.

Additionally, though claimant did not have other offers of employment when she tendered her resignation, she did accept another part-time job offer on or before March 25, 2023, her last day of work for the employer. While the record shows that this new work, which was to begin April 19, 2023, paid a higher hourly rate than her work for the employer, and that the offer was likely definite, since claimant began the work as anticipated, it does not show that the work was "to begin in the shortest length of time as can be deemed reasonable under the individual circumstances," as required by OAR 471-030-0038(5)(a). Because continuing work from the employer was available to claimant after March 25, 2023, the record does not suggest any circumstance that would have prevented claimant from remaining in her job with the employer until the other work commenced. Accordingly, claimant did not quit working for the employer for other work that was to begin in the shortest length of time reasonable under the circumstances and has not established good cause for quitting work to begin other employment.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 19, 2023.

DECISION: Order No. 23-UI-225823 is affirmed.

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

DATE of Service: July 19, 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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