

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0761

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 18, 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 April 23, 2023 (decision # 113047). Claimant filed a timely request for hearing. On June 20, 2023, ALJ Sachet-Rung conducted a hearing, and on June 23, 2023 issued Order No. 23-UI-228567, affirming decision # 113047. On July 10, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) United Parcel Service, Inc. employed claimant as a truck pre-loader from April 30, 2019 until April 24, 2023.

(2) Claimant resided in Vancouver, Washington and commuted to the employer's facility in Portland, Oregon by driving his personal vehicle. Claimant worked an early shift; typically starting work around 4 a.m. Claimant's shifts were usually about four hours long.

(3) Claimant last performed work for the employer on January 12, 2023. Thereafter, claimant began a period of Family and Medical Leave Act (FMLA) leave in order to stay home and watch his young child while claimant's wife was recovering from surgery. Claimant was scheduled to return from leave on April 26, 2023.

(4) Approximately a week before he was scheduled to return to work, claimant's vehicle was repossessed, leaving claimant with no way to get to work. Owing to how early his shift started, claimant was unable to find anyone nearby who could give him a ride to work. Similarly, claimant found that none of the public transportation routes between his home and the employer's facility ran early enough in the morning to get him to his shift.

(5) On April 24, 2023, claimant sent his manager a text message to explain his situation, stating that he did not have transportation to work, was not certain when he would, and was not sure what to do, so

perhaps it would be best if he resigned. His manager responded, “There’s nothing I can do. I can’t help you out. You have to be back [by April 26, 2023].” Audio Record at 12:40. Claimant’s manager did not mention, and claimant was not aware, that claimant had approximately 12 hours of vacation time available for use. Claimant’s manager also did not suggest to claimant that there might have been other shifts available that claimant could have switched to. By contrast, in a prior situation in which claimant needed to take time off for a personal matter, his manager had told him that he could offer claimant more time off if needed, and also mentioned that claimant had vacation time available to use. Audio Record at 24:05.

(6) Based on his text conversation with his manager, claimant understood that he was required to return to work on April 26, 2023 as scheduled. Because he did not believe he would be able to report to work that day due to his lack of transportation, claimant quit work on April 24, 2023. At that time, claimant did not know how long it would take him to obtain a new vehicle.

(7) On or around April 29, 2023, claimant obtained a new vehicle.

CONCLUSIONS AND REASONS: Claimant quit 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) (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.

Claimant quit work due to a lack of transportation that kept him from being able to return to work as scheduled. Because claimant was physically unable to report to the employer’s facility, and therefore perform his work, claimant faced a grave situation. While the order under review acknowledged the gravity of claimant’s circumstances, it concluded that claimant did not have good cause to quit because he failed to pursue the reasonable alternatives of using his accrued vacation time “until he found another method of transportation,” or taking another shift that started at a different time. Order No. 23-UI-228567 at 2. However, the record does not support that conclusion.

As a preliminary matter, regardless of whether claimant actually had any alternatives to quitting, claimant’s manager, apprised of the circumstances, specifically told claimant that there was “nothing [he] could do” to help claimant. This is contrasted with at least one earlier instance in which the manager specifically offered claimant help, and suggested that he could allow claimant time off, when a different personal matter arose for claimant. Given the manager’s previous offer of help and the definitive statement on April 24, 2023 that no help was available, a reasonable and prudent person in claimant’s circumstances would have understood the manager’s statement that day to mean that no options remained to allow them to continue working if they could not find transportation back to work by April 24, 2023. As such, the record shows that a reasonable and prudent person would have concluded that pursuing the alternatives proposed in the order under review would have been futile. See

Early v. Employment Department, 247 Or App 321 (2015) (the employer's failure to offer the claimant alternatives "implicitly suggest[s] that there were none" and therefore further attempts to resolve the issue would have been futile).

Furthermore, the proposed reasonable alternative of moving to a different shift was premised upon a finding of fact that the record does not support. The order under review found that "[t]he employer had different shifts beginning at 4:00 p.m. or 11:00 p.m." Order No. 23-UI-228567 at 1. At hearing, the employer's witness testified that claimant could have requested a transfer to a different shift, and stated, "I believe at his location there were two different shifts later in the day, if I remember correctly." Audio Record at 20:12. The employer's witness did not testify that any of the shifts were actually *available* for claimant to transfer to. Nor does the record show that transportation would have been available to claimant if he had taken a different shift. Given the speculative and uncertain nature of the employer's testimony and the lack of evidence to show that taking another shift would have solved claimant's situation, the record does not show that this would have constituted a reasonable alternative to quitting.

Finally, even if claimant had known that he had a small amount of paid leave available to him, a reasonable and prudent person would not have viewed using that leave as a reasonable alternative to quitting. Because claimant's shifts were about four hours each, he had about 12 hours of leave available at the time he quit, and found a new vehicle about three days after he was scheduled to return to work, using that leave *may* have been sufficient, in retrospect, to cover claimant's absence while he sought a new vehicle. However, the record shows that claimant did not know, at the time that he quit, how long he would be without a vehicle, and it is not clear how claimant could have reasonably ascertained that at the time. Had claimant elected to use his accrued vacation time, he would have done so without a reason to believe that he would be able to return to work once he had exhausted that leave, rather than find himself in the same position as before he had elected to use the leave. As such, a reasonable and prudent person would have concluded that using the vacation time was not a reasonable alternative to quitting at the time that claimant quit.

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

DECISION: Order No. 23-UI-228567 is set aside, as outlined above.

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

DATE of Service: August 24, 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.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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 الاستئناف 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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