

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0812

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 2, 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 January 22, 2023 (decision # 81526). Claimant filed a timely request for hearing. On July 10, 2023, ALJ Amesbury conducted a hearing, and on July 12, 2023 issued Order No. 23-UI-230103, affirming decision # 81526. On July 24, 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) Costco Wholesale Corporation (Costco) employed claimant as a hearing aid specialist from October 2015 until January 28, 2023.

(2) On approximately October 7, 2022, claimant began a period of paternity leave from Costco in connection with the impending birth of his child. The child was born on October 14, 2022.

(3) On approximately October 19, 2022, claimant began working for another employer, Access Solutions, out of state. Claimant was stressed by his work for Costco and preferred the type of work and intermittent nature of the work offered by Access Solutions. Claimant remained out of state working for Access Solutions until approximately November 21, 2022.

(4) On approximately October 21, 2022, claimant's newborn child required emergency surgery. Other family members assisted claimant's wife with household responsibilities and providing medical care for the new child. Claimant remained working out of state for Access Solutions, though they offered to grant him leave to return to his family, which claimant declined. Based on the child's medical condition,

Costco granted claimant leave under the Family and Medical Leave Act (FMLA) in place of the previously granted paternity leave. Costco was unaware that claimant was using this leave to work for Access Solutions rather than to provide direct care for members of his immediate family.

(5) On approximately November 21, 2022, Access Solutions discharged claimant for lack of work, with the expectation that he would be rehired when work became available, tentatively on February 22, 2023. The hourly rate of pay was to be determined upon rehire and, based on the position to which claimant would be assigned depending on the company's needs at the time, would be within a range of \$18 to \$23. Claimant would be expected to work 84 hours per week. The employment relationship with Access Solutions was expected to continue indefinitely, though the work would be intermittent and claimant would be subject to temporary layoffs based on the needs of Access Solutions' customers. After being laid off from Access Solutions, claimant remained on leave from Costco and assisted his family as they dealt with the newborn child's medical issues. However, claimant would have immediately resumed working for Access Solutions out of state at any time if work were available.

(6) During December 2022 and January 2023, claimant was in discussions with Costco about quitting in order to work for Access Solutions. Claimant's separation was delayed at the request of Costco in the hopes that claimant would decide to keep working for them, and to extend claimant's family's insurance coverage. Claimant and Costco ultimately agreed that his resignation would become effective January 28, 2023 and that claimant would remain on FMLA leave until then.

(7) On January 22, 2023, claimant filed a claim for unemployment insurance benefits. The Department determined the claim to be monetarily valid for regular unemployment insurance (regular UI) benefits with a weekly benefit amount of \$761.

(8) On January 28, 2023, claimant quit working for Costco as anticipated.

(9) On March 6, 2023, claimant began working for Access Solutions again.

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) (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. 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).

Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(g). For purposes of OAR 471-030-0038, "compelling family reasons" means the illness or disability of a member of the individual's immediate family necessitates care by

another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(e)(B).

If an individual leaves work to accept an offer of other work, good cause exists 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. OAR 471-030-0038(5)(a). Furthermore, the offered work must reasonably be expected to continue, and must pay 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).

Claimant quit working for Costco in order to accept an offer of new work from Access Solutions. While claimant testified that he found his work for Costco "very overwhelming and stressful," he did not seek medical treatment for this. Transcript at 36-37. The record therefore suggests that this stress may have been a reason why claimant sought new employment, but was not the proximate cause of his decision to quit work. Claimant also asserted that he quit work due to "compelling [family] reasons," citing his newborn child's medical condition and its impact on his wife and other children. Transcript at 35-36. However, this assertion is undermined by his testimony that he would have left Oregon, where his family resided, to return to work for Access Solutions out of state for weeks or months at a time at a moment's notice, despite his unwillingness to return to work for Costco within commuting distance of his home and family. Transcript at 10, 35-36.

That claimant did not return from working out of state for Access Solutions to care for his immediate family while his newborn baby had emergency surgery, though he was granted leave by Costco for the specific purpose of providing such care and would have been allowed leave by Access Solutions to do so, further supports that claimant did not quit working for Costco to care for an immediate family member in need. Further, Costco granted claimant leave beginning October 7, 2022 for family medical reasons—which claimant largely used instead to work for Access Solutions until he was laid off by them—and the record suggests that Costco would not have denied claimant additional leave beyond January 28, 2023 for family medical purposes, since they attempted throughout December 2022 and January 2023 to persuade claimant to remain in their employ. Therefore, claimant has not established that he quit working for Costco because of a compelling family reason. Accordingly, claimant's reason for quitting was that he accepted a new offer of work from Access Solutions.

Claimant did not establish that the offer of new work met all of the requirements of OAR 471-030-0038(5)(a) necessary to demonstrate good cause for quitting work to accept the offer. Claimant was offered a permanent position with Access Solutions after being laid off due to a seasonal lack of work on November 21, 2022, which he accepted, and which was to begin once Access Solutions had work available to assign claimant. Claimant's job title, job duties, and rate of pay were to be determined depending on the employer's needs at the time he began working. Claimant understood to some degree the details of the offered employment, such as that he would be paid from \$18 to \$23 per hour, work an 84-hour work week, and that he would be subject to periodic layoffs due to the seasonal nature of the work. However, claimant's start date was not definite because it was contingent on Access Solutions having projects available for claimant to work on, and such projects "can get cancelled and changed at the last minute" with little notice. Transcript at 33. Claimant was given a tentative start date of February 22, 2023, however he did not actually start working again for Access Solutions until March 6, 2023, because "the two previous projects [scheduled to begin February 22, 2023] had been cancelled on me last minute." Transcript at 34. Claimant testified he believed that returning to work for Costco could

have harmed Costco's interests if he had to suddenly quit without notice in order to begin working for Access Solutions. Transcript at 36. However, claimant could reasonably have continued to work for Costco until within a short period of time of a confirmed start date for Access Solutions without significant harm to Costco. The 37 day period between January 28, 2023, when claimant quit working for Costco, and March 6, 2023, when he began working for Access Solutions, was therefore not the shortest length of time as can be deemed reasonable under the individual circumstances. Accordingly, pursuant to OAR 471-030-0038(5)(a), claimant has not shown that he quit work to accept an offer of other work with good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 22, 2023.

DECISION: Order No. 23-UI-230103 is affirmed.

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

DATE of Service: September 1, 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 desisyong ito.

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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