

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0813

Reversed & Remanded

PROCEDURAL HISTORY: On May 10, 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 12, 2023 (decision # 74356). Claimant filed a timely request for hearing. On July 5, 2023, ALJ Fraser conducted a hearing, and on July 6, 2023 issued Order No. 23-UI-229595, affirming decision # 74356. On July 24, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Tradesman employed claimant as a laborer from December 5, 2022 until he voluntarily quit work on March 16, 2023.

(2) As early as January 2023, claimant notified the employer of issues involving his pay. Claimant believed that some of the employer's pay practices did not comply with the law. These included failing to provide an itemized statement of pay and deductions each pay period, not paying claimant for all hours worked, and paying claimant less than the hourly rate agreed upon or required by law. Claimant believed these issues continued after his January 2023 complaint. At some point, claimant filed a complaint regarding these pay issues with the Oregon Bureau of Labor & Industries (BOLI). BOLI's investigation remained in progress as of the July 5, 2023 hearing date.

(3) As a condition of his employment, the employer required their employees working in claimant's position to purchase small tools needed to complete their work. The employer, upon request, would lend the money needed to purchase the tools to an employee, who could repay the loan through deductions from their paychecks over time. Claimant was permitted to borrow tools from the employer or others when he first began working for the employer because he did not have any of his own. However, in February 2023, the employer instructed claimant to purchase his own tools or face discharge.

(4) In February 2023, claimant purchased in excess of \$400 in small tools to satisfy the employer's requirement. Claimant did not borrow money from the employer to do so.

(5) On approximately March 15, 2023, the employer told claimant the employer would reassign him to a new supervisor and crew the next day. The employer made this reassignment because they had no more work for the season of the type that claimant typically performed with his current supervisor. Claimant believed the new supervisor had a reputation of being unreasonably demanding and ordering his subordinates to engage in unsafe activities in order to provoke employees into quitting, though claimant had only worked with the new supervisor “a handful of times” on “partial days.” Transcript at 19. Claimant had heard rumors that the employer’s owner intended to discharge claimant over a dispute about whether claimant had been granted leave for a recent vacation and for other reasons, and believed that the reassignment was an attempt to get claimant to quit in lieu of discharging him. Claimant did not complain to the owner about the reassignment.

(6) On March 16, 2023, shortly after midnight and approximately four to five hours after he learned of the impending reassignment, claimant texted the employer’s owner that he was quitting, effective immediately. Claimant quit because of his dissatisfaction with the unresolved pay issues, including the requirement to purchase tools that effectively reduced his overall pay, and because he believed the reassignment was unfair and posed a threat to his safety at work.

CONCLUSIONS AND REASONS: Order No. 23-UI-229595 is reversed and the matter remanded for further development of the record.

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).

ORS 652.610 provides, in relevant part:

(1)(a) All persons, firms, partnerships, associations, cooperative associations, corporations, municipal corporations, the state and its political subdivisions, except the federal government and its agencies, employing, in this state, during any calendar month one or more persons, shall provide the employee on regular paydays and at other times payment of wages, salary or commission is made, with an itemized statement as described in paragraph (b) of this subsection[.]

OAR 839-020-0020 (January 9, 2002) provides, in relevant part:

Employers may not deduct the cost of any of the following items from the minimum wage:

(1) Tools.

(2) Equipment.

* * *

ORS 653.025 provides, in relevant part:

(1) Except as provided in subsections (2) and (3) of this section, ORS 652.020 and the rules of the Commissioner of the Bureau of Labor and Industries issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

* * *

(i) From July 1, 2022, to June 30, 2023, \$13.50.

* * *

The order under review concluded that claimant voluntarily quit work without good cause because his reassignment to a new supervisor and crew did not constitute a grave situation. Order No. 23-UI-229595 at 2. The record may support the conclusion that this, alone, did not constitute a grave situation. However, further development of the record is needed to determine whether, in combination with his other reasons for quitting, claimant faced a situation of such gravity that he had no reasonable alternative but to leave work.

Claimant quit working for the employer because he was dissatisfied with being reassigned to a new supervisor and crew, believed that the reassignment was the result of his ongoing complaints regarding pay issues that had not been resolved, and had unresolved wage and hour complaints. While the record may not show by a preponderance of evidence that the reassignment was a grave situation for the reasons stated in the order under review, the underlying complaints regarding the employer's pay practices could constitute good cause for quitting upon further development of the record. On remand, the record should therefore be further developed to determine whether claimant faced a grave situation as a result of the employer's pay practices.

Where wage and hour violations are ongoing, it is not reasonable to expect claimant to continue to work for an indefinite period of time, and filing a complaint with BOLI about the pay practices is not a reasonable alternative to quitting. *See J. Clancy Bedspreads & Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990). However, where wage and hour violations have ceased and the only remaining dispute between claimant and the employer is the resolution of past violations, it may be reasonable to continue working for the employer while litigating the claim. *See Marian Estates v. Employment Dept.*, 158 Or App 630, 976 P2d 71 (1999). The record shows that, as of the date of the hearing, BOLI continued to investigate claimant's complaints regarding pay, and had not resolved whether the employer had engaged in wage and hour violations, and whether such violations were ongoing at the time claimant quit work. *See Exhibit 1 at 9; Transcript at 14.* Further development of the record is needed to determine whether the practices that

gave rise to the complaints constituted wage and hour violations and, if so, whether they were ongoing or had ceased before claimant voluntarily quit.

In explaining his complaint, claimant testified, “[E]very paycheck I’d not get a pay stub.” Transcript at 14. As ORS 652.610(1)(a) requires that an employer issue an itemized statement, commonly referred to as a pay stub, with an employee’s pay, the record suggests the possibility that claimant faced ongoing wage and hour violations if the employer failed to provide such statements. Additionally, claimant alleged that he was not paid for all hours worked, testifying that, “I felt like I was getting robbed every other week[.]” Transcript at 14. Claimant stated that he confronted the owner about not being paid as agreed in January 2023 and that the owner said he would “pay me cash,” and never did. Transcript at 14. If the failure to pay claimant for all hours worked was occurring on an ongoing basis, this also may have constituted wage and hour violations.

Therefore, further development of the record is needed to determine whether claimant quit due to ongoing wage and hour violations. On remand, inquiry should be made into when claimant first complained of pay issues to the employer and to BOLI; whether the employer paid claimant his agreed-upon wage for all hours worked; whether that wage comported with applicable laws regarding minimum wage, considering the effect of being required to purchase tools; and, whether the employer provided claimant with an itemized pay statement each pay period that met the requirements of ORS 652.610. If any wage and hour violations are found to have occurred, further inquiry must be made into whether claimant quit because the violations were ongoing, or whether claimant quit due to past violations that remained unresolved even though the practice had ceased. Further, if the record on remand demonstrates that claimant quit due to a grave situation that did not constitute *ongoing* wage and hour violations, additional inquiry should be made into whether claimant had reasonable alternatives to quitting.

For these reasons, Order No. 23-UI-229595 is reversed, and the matter remanded for further development of the record.

DECISION: Order No. 23-UI-229595 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 5, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-229595 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.