

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0919

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits as a result of the work separation (decision # 141213). The employer filed a timely request for hearing. On August 3, 2023, ALJ Logan conducted a hearing, and on August 4, 2023 issued Order No. 23-UI-232372, reversing decision # 141213 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective May 28, 2023. On August 16, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision. Claimant disputed the conclusions of the order under review that the separation was a voluntary leaving rather than a discharge, and that she quit work without good cause because the new employment was not set to begin in the "shortest amount of time reasonable under the circumstances." Claimant's Written Argument at 2-3; Order No. 23-UI-232372 at 3.

Claimant argued that the work separation was a discharge, rather than a voluntary leaving, because the separation occurred on June 2, 2023 at the employer's suggestion rather than the effective date of June 23, 2023 that claimant proposed in her resignation. Claimant's Written Argument at 2. Claimant wrote to the employer that she was "open to changing [the proposed June 23, 2023 date] if you need it to," and when the employer proposed June 2, 2023 instead, claimant replied, "Whatever works best for you, works for me," though she actually desired to work until June 23, 2023. Claimant's Written Argument at 2. The record supports that claimant, by not objecting to the June 2, 2023 effective date proposed by the employer, expressed agreement with that date, though she may have internally disagreed at the time with her decision to do so.

Relevant case law holds that where a claimant resigned, and claimant and the employer mutually agreed upon a termination date, the work separation is characterized as a voluntary leaving. *Employment Dept. v. Shurin*, 154 Or App 352, 959 P2d 637 (1998); *J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990). "Agreement" can be inferred if the claimant did not voice disagreement with

the separation date established by the employer or otherwise insist upon working until the original resignation date. *See J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990). While claimant may have been unfamiliar with these legal principles, they nevertheless govern the nature of the work separation. Claimant did not assert in her argument, and the record does not show, that she voiced disagreement with the employer's proposed June 2, 2023 separation date or that she insisted on working beyond that date. Accordingly, the order under review properly concluded that claimant voluntarily quit work on June 2, 2023.

Claimant also argued that she had good cause to quit work for new employment because the new employment was expected to start in the shortest possible time reasonable under the circumstances. Claimant's Written Argument at 3. The new employment was expected to begin July 17, 2023, and claimant tendered a resignation, which proposed an effective date of June 23, 2023. Claimant argued that this intervening period was the shortest time reasonable under the circumstances because the employer had previously approved "an employee benefit" of three weeks of paid time off to prepare for an exam, scheduled from June 26, 2023 through July 14, 2023. Claimant's Written Argument at 3. Claimant reasoned that proceeding with this time off as planned, just prior to separating from employment, would result in the employer feeling "resentful" toward her. Claimant's Written Argument at 3. It can reasonably be inferred that in many situations, an employee's decision to quit work can be resented to some degree by their employer due to its impact on the employer, financially or otherwise. That claimant did not intend to continue working for the employer during this three-week period by taking paid leave that she had earned as a benefit to avoid potential resentment by the employer was not a circumstance that rendered the duration of the proposed gap in employment reasonable. In addition, claimant testified that she "wanted to take a break between jobs," and could have worked until the new job began. Audio Record at 14:24 to 15:00. Accordingly, claimant did not show that she was to begin the new employment in the shortest length of time as can be deemed reasonable under the individual circumstances, and the order under review properly concluded that she therefore quit work without good cause.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-232372 is affirmed.

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

DATE of Service: September 29, 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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