

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1054

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 10, 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 July 16, 2023 (decision # 80256). Claimant filed a timely request for hearing. On September 6, 2023, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on September 14, 2023, issued Order No. 23-UI-235896, affirming decision # 80256. On September 19, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

EVIDENTIARY MATTER: Order No. 23-UI-235896 stated that "[n]o exhibits were offered or admitted into evidence." Order No. 23-UI-235896 at 1. However, the ALJ admitted Exhibit 1 into evidence, consisting of five pages submitted by claimant. Audio Record at 6:20. EAB reviewed and considered Exhibit 1 when reaching this decision.

FINDINGS OF FACT: (1) The Home Depot employed claimant as a cashier from February 2023 until July 18, 2023, at their store in The Dalles, Oregon. Claimant worked part-time at a wage of \$19 per hour and typically worked 15 to 23 hours per week, depending on the store's needs. Per the employer's policy, part-time employees such as claimant could not work more than 24 hours per week.

(2) While working for the employer, claimant had a full-time job with another employer which was claimant's primary source of income. Claimant rented a home in The Dalles for \$1,575 per month and depended on the income from her full-time job to afford that rent.

(3) On June 27, 2023, claimant began a period of unpaid leave from the employer in order to travel. The leave was scheduled to end July 27, 2023.

(4) On July 18, 2023, claimant was involuntarily separated from her full-time employment. Without the income from that employment, claimant was unable to afford her rent or qualify to rent elsewhere in the area of The Dalles. Claimant's sister offered to allow claimant to live with her in Eugene, Oregon.

(5) Later on July 18, 2023, claimant quit working for the employer because she could not afford her rent without her primary employment and therefore decided to move in with her sister in Eugene. Prior to quitting, claimant sought a full-time position with the employer at the store in The Dalles, but no positions were available. She also sought full-time and part-time work with the employer's stores in the Eugene area, but no positions were available.

CONCLUSIONS AND REASONS: Claimant quit working for the employer 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 because she could not afford to continue living in The Dalles after being involuntarily separated from her primary employment, and had to move in with her sister in Eugene to avoid becoming homeless. The order under review concluded that claimant quit without good cause because her inability to afford rent was not a grave situation. Order No. 23-UI-235896 at 3. The record does not support this conclusion.

Claimant earned \$19 per hour working for the employer. The employer offered her less than 24 hours of work per week as a matter of policy, and sometimes offered her as few as 15 hours per week. Even if claimant were consistently offered 23 hours of work per week, her weekly income of \$437 would be insufficient to pay her \$1,575 monthly rent.¹ While the record is silent as to claimant's efforts to find accommodations with lower rent within commuting distance of the store where she worked, she testified that she would have been unable to qualify for any lease with her landlord because the rent would exceed half of her income. Audio Record at 18:15. It is reasonable to infer that other accommodations in the area would have had similar rents and income requirements for potential tenants, and claimant therefore would not have been able to afford or secure alternate accommodations after she was involuntarily separated from her primary employment. In light of her sister's offer to allow claimant to stay in her Eugene home, presumably without payment of rent, no reasonable and prudent person would have instead faced the prospect of imminent homelessness in order to work part-time for the employer under the circumstances. Accordingly, claimant quit work due to a grave situation.

Claimant also had no reasonable alternative to quitting work. Claimant attempted to apply for a full-time position in the store where she worked, as well as to transfer to another position with the employer in

¹ \$19 x 23 hours = \$437

Eugene. However, no such positions were open in either location. Facing the inability to pay her rent or secure other accommodations within commuting distance of the store where she worked, the record shows claimant had no reasonable alternative to quitting work in order to move in with her sister in Eugene. Therefore, claimant has shown good cause for quitting work.

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

DECISION: Order No. 23-UI-235896 is set aside, as outlined above.

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

DATE of Service: November 1, 2023

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.

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.

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
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