

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1071

Application for Review Order No. 23-UI-235726 Dismissed
Order No. 23-UI-235135 Affirmed ~ Ineligible Weeks 30-21 through 35-21
Order No. 23-UI-235134 Affirmed ~ Disqualification

PROCEDURAL HISTORY: On November 9, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective October 4, 2020. Claimant filed a timely request for hearing. On November 30, 2021, notice was mailed to claimant that a hearing was scheduled for December 14, 2021. On December 14, 2021, claimant failed to appear at the hearing, and ALJ Frank issued Order No. 21-UI-181838, dismissing claimant's request for hearing due to claimant failing to appear. On December 20, 2021, claimant filed a timely request to reopen the December 14, 2021, hearing.

On February 2, 2023, the Department served notice of an administrative decision concluding that claimant did not actively seek work from July 25 through September 4, 2020, and was ineligible for benefits for that period (decision # 92626). Also on February 2, 2023, the Department issued an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective October 11, 2020 (decision # 90219). Claimant filed timely requests for hearing on decisions # 92626 and 90219. On August 25, 2023, the Department issued an administrative decision replacing decision # 92626, concluding that claimant was not actively seeking work from July 25 through September 4, 2021 (weeks 30-21 through 35-21) and was ineligible for benefits for those weeks (decision # 82853). Claimant's request for hearing on decision # 92626 was applied to decision # 82853. On August 31, 2023, ALJ Meerdink conducted hearings on decisions # 82853 and 90219, and on September 6, 2023, issued Orders No. 23-UI-235135 and 23-UI-235134, affirming decisions # 82853 and 90219.

On September 5, 2023, ALJ Sachet-Rung conducted a hearing regarding the November 9, 2021 PUA determination, and on September 13, 2023 issued Order No. 23-UI-235726, allowing claimant's request to reopen the December 14, 2021 hearing and reversing the November 9, 2021 PUA determination by concluding that claimant was eligible for PUA benefits for the weeks of February 9 through April 25, 2020 (weeks 07-20 through 17-20) and October 18, 2020 through September 4, 2021 (weeks 43-20).

through 35-21). On September 22, 2023, claimant filed applications for review of Orders No. 23-UI-235726, 23-UI-235135, and 23-UI-235134 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-235726, 23-UI-235135, and 23-UI-235134. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-1072, 2023-EAB-1071, and 2023-EAB-1070).

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

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), **Order No. 23-UI-235135**, concluding claimant was ineligible for benefits for weeks 30-21 through 35-21 because she did not actively seek work for those weeks, is **adopted**. The rest of this decision addresses claimant’s applications for review of Orders No. 23-UI-235726 and 23-UI-235134.

FINDINGS OF FACT: (1) The Department (hereinafter referred to as “the employer” when acting in that capacity) employed claimant full-time as an eligibility caseworker from Spring 2020 until October 16, 2020.

(2) Prior to and during her employment with the employer, claimant also worked full-time as a self-employed travel agent.

(3) Prior to and during her employment, claimant collected retirement benefits through Oregon Public Employees Retirement System (PERS) of approximately \$2,100 monthly. PERS rules limited a retiree collecting retirement benefits to working a total of 1,040 hours in PERS-eligible public employment before suspending payment of the retiree’s benefits.

(4) By October 2020, claimant had worked approximately 890 hours for the employer and felt she had to decide, prior to reaching 1,040 hours, whether to continue working for the employer and having her PERS benefits suspended. Claimant felt she was “too tired” to perform both full-time jobs and decided to quit working for the employer to pursue her self-employment. Audio Record at 8:02. Claimant gave approximately two weeks’ notice to the employer that she would be quitting work on October 16, 2020.

(5) On October 16, 2020, claimant quit working for the employer.

(6) On September 6, 2023, Order No. 23-UI-235726 was issued, concluding that claimant was eligible for PUA benefits for each week of PUA benefits claimed if all other eligibility requirements were met.

(7) On September 22, 2023, claimant filed an application for review of Order No. 23-UI-235726. Claimant’s written argument did not assign error to any part of Order No. 23-UI-235726 or request further relief as to her eligibility for PUA benefits. Claimant’s Written Argument at 3–4.

CONCLUSIONS AND REASONS: Claimant’s application for review of Order No. 23-UI-235726 presents no justiciable controversy and is dismissed. Claimant quit work without good cause.

Application for review of Order No. 23-UI-235726. On September 22, 2023, claimant filed with EAB an application for review of an order that allowed the appellant PUA benefits. Claimant did not assign

error to any portion of that order, did not request reversal of any portion of the order, and alleged no facts entitling her to further relief as to Order No. 23-UI-235726. Accordingly, there is no justiciable controversy before EAB based upon claimant's application for review of Order No. 23-UI-235726. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because the case before EAB presents no justiciable controversy, the application for review of Order No. 23-UI-235726 is dismissed and that order remains undisturbed.

Voluntary leaving (Order No. 23-UI-235134). 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.

Per OAR 471-030-0038(5)(b), leaving work without good cause includes:

* * *

(G) Leaving work for self employment.

* * *

Claimant quit work because she felt she could not work her full-time job for the employer while engaging in full-time self-employment, and chose to pursue only the self-employment. Claimant believed she needed to decide between these two jobs in October 2020 because she risked suspension of her PERS benefits if she continued to work for the employer for another approximately 150 hours. Claimant testified she would have continued working for the employer despite the suspension of PERS benefits if the travel agent work "wasn't involved." Audio Record at 11:40. She further testified that "if the PERS issue was not an issue" she would have quit working for the employer to pursue the self-employment work anyway because she could not "keep doing both jobs." Audio Record at 12:20. Therefore, while the potential loss of PERS benefits influenced the timing of her decision, claimant's testimony established that she would have chosen to quit working for the employer to pursue self-employment even if the loss of PERS benefits were not a consideration. Accordingly, the record shows that it was this preference for self-employment, and not the possibility of her retirement benefits being suspended, that caused claimant to quit working for the employer. Claimant quit working for the employer to focus on her self-employment, which did not constitute good cause for leaving work pursuant to OAR 471-030-0038(5)(b)(G).

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective October 11, 2020.

DECISION: Claimant's application for review of Order No. 23-UI-235726 is dismissed and Order No. 23-UI-235726 remains undisturbed. Orders No. 23-UI-235135 and 23-UI-235134 are affirmed.

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

DATE of Service: November 6, 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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