

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1151

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 23, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective July 30, 2023 (decision # 135214). Claimant filed a timely request for hearing. On September 28, 2023, ALJ Toth conducted a hearing, and on October 6, 2023, issued Order No. 23-UI-237962, affirming decision # 135214. On October 13, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on October 13, 17, 19, 21, and November 1, 2023. EAB did not consider claimant's October 13, 17, 21, and November 1, 2023 arguments when reaching this decision because claimant did not include a statement declaring that he provided a copy of those arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, all of claimant's arguments 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's October 19, 2023 argument to the extent it was based on the record.

In his October 19, 2023 written argument, claimant asserted that he did not receive notification of the hearing until 1 p.m. the day prior to the hearing, alluded to the ALJ having excluded the documents he submitted as Exhibit 2, and resubmitted those documents along with that written argument. Claimant's October 19, 2023 Written Argument at 1. To the extent that claimant has asserted that the ALJ should have admitted Exhibit 2, claimant's argument fails because, as the order under review noted, claimant did not serve those documents on the employer. Order No. 23-UI-237962 at 1. While claimant may have had a short timeline in which to submit the documents in Exhibit 2 because of his delayed receipt of the notice of hearing, the fact that claimant was able to submit the documents to the Office of Administrative Hearings (OAH) prior to the hearing suggests that he could have also served them on the employer at that time. Therefore, claimant has also failed to show that he failed to submit those

documents into evidence due to factors or circumstances beyond his reasonable control. As a result, EAB has not considered those documents when reaching this decision.

FINDINGS OF FACT: (1) Paradigm Foodworks, Inc. employed claimant as a production technician from May 18, 2018 until August 1, 2023.

(2) In or around May 2023, claimant’s driver’s license was suspended as a result of “multiple car accidents.” Exhibit 1 at 2. At the time, claimant was living in a remote area that was not served by public transportation. Claimant was unable to get to work without driving his own vehicle. Claimant therefore continued to drive to work despite having a suspended license.

(3) On or around July 15, 2023, claimant got a traffic ticket. At that point, claimant could not afford to pay for car insurance, and could not afford the financial impact or potential criminal penalties of continuing to drive without a license.

(4) On July 25, 2023, the employer had planned to discharge claimant due to concerns about claimant allegedly acting “very volatile,” having “massive mood swings,” and similar behavior. Transcript at 27. That day, claimant arrived late for work, and ignored the owner’s subsequent attempts to reach him at his desk. The owner then walked over to claimant’s desk and, after some discussion, claimant followed her to her office. The owner told claimant that she was going to discharge him, but relented and allowed him to continue working after he “begged for his job.” Transcript at 31.

(5) On August 1, 2023, claimant approached the owner, told her that he had been “driving to work without a license or insurance and was afraid he was going to be arrested,” and that he therefore had to quit. Exhibit 1 at 2. The owner accepted claimant’s resignation, and claimant quit work that day.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work 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. Under OAR 471-030-0038(5)(f), where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4).

A conflict in the record exists regarding the reason that claimant quit work. Claimant asserted that he quit because the owner had physically struck him twice, including during the meeting on July 25, 2023; the owner, testifying for the employer, asserted that claimant quit because he did not have a valid license to drive to work. Transcript at 10, 20–21. The owner refuted claimant’s allegations that she had struck him. Transcript at 21. Other than the parties’ testimony and the employer’s written narrative admitted as

part of Exhibit 1, the record does not contain evidence to corroborate either party's account of why claimant quit. Therefore, the evidence on that point is, at best, equally balanced. As claimant bears the burden of proof in this case, the record shows that the employer's account is, more likely than not, the more accurate version of events, and the facts have been found accordingly.

Because his license was suspended and he lived in an area not served by public transportation, claimant was unable to report to work without driving illegally, putting him in financial and legal jeopardy. As claimant quit due to these circumstances, claimant quit for a grave reason. The order under review acknowledged this but concluded that claimant did not have good cause to quit because he "created the gravity by losing his driving privileges and then continuing to drive while suspended, ultimately getting a traffic ticket." Order No. 23-UI-237962 at 3. The record does not support this conclusion.

In so concluding, the order under review applied OAR 471-030-0038(5)(f) to claimant's circumstances, suggesting that his license suspension was due to his own actions. This reasoning fails because the record only shows that claimant's license was suspended due to "multiple car accidents." It does not show either that those accidents were his fault, otherwise the result of his own actions, or that a reasonable and prudent person in the circumstances leading to those accidents would have behaved differently than claimant did.

Further, given that claimant received a traffic ticket about two weeks before he quit, but had been driving without a license for approximately two months before that, it can be inferred from the record that claimant having received the ticket was a precipitating event which caused him to take the license suspension, and its potential consequences, more seriously. The record is silent as to the reason that claimant got a ticket on July 15, 2023. While claimant was presumably cited for driving without a license, it is not clear as to whether he incurred any additional violations at that time. Regardless, even if the record showed that claimant was issued the ticket due to having committed, e.g., a moving violation, this would not change the fact that the actual reason that claimant quit was his concern that continuing to drive without a license would result in further financial and legal trouble. Neither does the record show that any other options, such as alternate transportation arrangements, were available to claimant. Under such circumstances, a reasonable and prudent person would have concluded that they had no reasonable alternative but to quit work.

For the above reasons, claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit. Claimant therefore voluntarily quit with good cause and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 23-UI-237962 is set aside, as outlined above.

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

DATE of Service: November 28, 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.

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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

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 الاستئناف 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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