

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1299

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 30, 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 May 14, 2023 (decision # 135114). Claimant filed a timely request for hearing. On November 20, 2023, ALJ Fraser conducted a hearing at which the employer failed to appear, and on November 21, 2023, issued Order No. 23-UI-241633, affirming decision # 135114. On November 27, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed written arguments on November 27, 2023, and December 23, 2023. EAB considered claimant's December 23, 2023, argument when reaching this decision. Claimant's November 27, 2023, argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's November 27, 2023, argument to the extent it was based on the record.

FINDINGS OF FACT: (1) LH 1116 South Hemlock, LLC employed claimant as a houseman at their hotel in Cannon Beach, Oregon from approximately March 2022 until May 16, 2023.

(2) Claimant typically worked two weekday shifts and two weekend shifts each week, from 9:00 a.m. to 2:30 p.m. Other employees worked shifts which concluded at least as late as 5:30 p.m. The employer paid claimant \$18 per hour.

(3) Claimant resided in Seaside, Oregon, which was approximately 12 miles away from the employer's hotel. For the majority of his tenure with the employer, claimant commuted to work via a bus operated by the Sunset Empire Transportation District (SETD). Earlier in his tenure, claimant's manager at the time permitted claimant to alter his work schedule as necessary to accommodate changes or delays in bus service.

(4) On April 29, SETD temporarily suspended bus services due to the agency's financial difficulties. Thereafter, claimant relied on his coworkers to give him rides to and from work. Claimant's coworkers were not always available to drive him to or from work, however. Claimant could not afford the cost of a rideshare service to take him to work.

(5) Claimant last performed work for the employer on or around May 4, 2023, and thereafter stayed home due to the lack of transportation to work. Claimant used paid vacation leave to cover some of this time. Later that week, claimant applied for a position with a Holiday Inn that was located in Seaside.

(6) During the week of May 15, 2023, the Seaside Holiday Inn offered claimant a job which paid \$17 per hour for 25 to 32 hours of work per week. That employer required claimant to pass a background check before he could begin working for them.

(7) On May 15, 2023, SETD resumed limited bus service on the route which included stops at Seaside and Cannon Beach. At that time, the only bus which stopped at Cannon Beach arrived there at 7:57 a.m. and left at 5:45 p.m. Claimant's shift concluded more than three hours prior to the arrival of the evening bus, and he felt that he could not wait for that bus. Claimant did not ask his manager if he could work later to avoid spending unpaid time waiting for the bus after work, or otherwise request scheduling changes that would accommodate the limited bus service.

(8) Because he could no longer reliably get to work, claimant accepted the offer with the Seaside Holiday Inn and, on May 16, 2023, notified the employer that he was resigning effective that day.

(9) On May 18, 2023, claimant's background check for the Seaside Holiday Inn was completed. On May 23, 2023, claimant began working for the Seaside Holiday Inn. SETD resumed its normal bus operations in or around November 2023.

(10) Claimant's unemployment insurance weekly benefit amount was \$243.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without 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.

A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left." OAR 471-030-0038(5)(a). In pertinent part, the Department does not

consider a job offer to be definite “if [it] is contingent upon . . . [such things as] passing a drug test, background check, credit check, and/or an employer receiving a contract.” Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

Claimant voluntarily quit work because the bus service he relied upon to get to work temporarily limited its schedule, impairing his ability to get to work and leading him to obtain work closer to home. To the extent that claimant quit work due to the issues with the bus service itself, he did so without good cause. At the time that he quit, the bus service was offering only one bus to get him to work in Cannon Beach, and another to get him home to Seaside. The evening bus arrived more than three hours after claimant’s normally scheduled shift ended, which would have required claimant to wait, unpaid, during the intervening time. Because claimant could not reliably get to and from work without waiting an excessive amount of time, he arguably faced a grave situation. However, claimant failed to seek reasonable alternatives to quitting.

Claimant’s typical shifts ran from 9:00 a.m. to 2:30 p.m. The record shows that claimant’s previous manager had offered claimant leeway in his schedule in order to accommodate the bus schedule. Claimant’s testimony suggested that he did not believe the current manager would have offered him such leeway. *See* Audio Record at 20:00. However, claimant did not talk to his manager about the matter, seemingly just presuming that the manager would not attempt to accommodate claimant while transportation options were limited. Because claimant did not attempt to work out a modified schedule with the employer, which might have allowed him to get to and from work on the bus without a long, unpaid wait prior to his ride home, claimant failed to seek reasonable alternatives. Therefore, to the extent that claimant quit work due to the limited bus schedule available at that time, he did so without good cause.

Similarly, to the extent that claimant quit work because he had accepted another job, he also did so without good cause. The Seaside Holiday Inn offered claimant a wage of \$17 per hour, at 25 to 32 hours per week. At a minimum, this would have resulted in a weekly wage of \$425, which is more than claimant’s weekly benefit amount. There is no indication in the record that claimant had reason to believe that the job offer was temporary in nature; as such, it is more likely than not that claimant reasonably expected the work to continue. Claimant began working at the Holiday Inn on May 23, 2023, a full week after he quit working for this employer. Transportation concerns aside, the record does not show that claimant could not have continued working for this employer for the intervening week. However, even assuming that the offered job began in the shortest period of time reasonable under the circumstances, the job offer was not “definite” under the Department’s interpretation of OAR 471-030-0038(5)(a).

The record shows that claimant was required to complete a background check in order to work for the new employer, and that the background check was completed on May 18, 2023. Because claimant quit on May 16, 2023, the background check was still incomplete at the time he quit, and the job offer was still contingent upon a condition he had not yet met. Because the job offer was contingent upon the background check at the time claimant quit, the offer was not “definite” under the Department’s interpretation of OAR 471-030-0038(5)(a), and claimant therefore did not have good cause to quit to accept other work.

For the above reasons, claimant voluntarily quit without good cause, and is therefore disqualified from receiving unemployment insurance benefits effective May 14, 2023.

DECISION: Order No. 23-UI-241633 is affirmed.

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

DATE of Service: January 9, 2024

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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