

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0067

Order No. 24-UI-244525 ~ Affirmed ~ Disqualification
Order No. 24-UI-244526 ~ Reversed ~ Eligible Weeks 40-23 through 49-23

PROCEDURAL HISTORY: On December 4, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective September 17, 2023 (decision # 130813). Also on December 4, 2023, the Department served notice of an administrative decision concluding that claimant was not able, available, and actively seeking work during the weeks including October 1, 2023 through November 25, 2023 (weeks 40-23 through 47-23) and was therefore not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 131152).¹ Claimant filed timely requests for hearing on decisions # 130813 and 131152. On January 2, 2024, ALJ Buckley conducted hearings on both matters at which the employer failed to appear, and issued Order No. 24-UI-244525, affirming decision # 130813, and Order No. 24-UI-244526, modifying decision # 131152 by concluding that claimant was not available for work and not actively seeking work during the weeks of October 1, 2023 through December 9, 2023 (weeks 40-23 through 49-23) and was therefore not eligible to receive unemployment insurance benefits for those weeks. On January 10, 2024, claimant filed applications for review of Orders No. 24-UI-244525 and 24-UI-244526 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-244525 and 24-UI-244526. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0067 and 2024-EAB-0068).

FINDINGS OF FACT: (1) Loy Clark Pipeline Co. employed claimant as a drill operator and foreman from August 2016 until September 20, 2023.

(2) In 2023, claimant was working in Coos Bay, Oregon for “weeks at a time,” while his mother lived in Battle Ground, Washington. Order No. 24-UI-244525 Audio Record at 8:00.

¹ Decision # 131152 concluded that claimant “did not meet one or more of these requirements,” but only made findings that claimant was not available for work.

(3) On September 20, 2023, claimant learned that his mother's health condition "took a horrible turn for the worse." Order No. 24-UI-244525 Audio Record at 7:32. Claimant's mother began living in a rehabilitation facility that day. Claimant felt that he needed to be closer to his mother due to her health condition.

(4) On September 20, 2023, upon learning of the change in his mother's condition, claimant made "a very rash decision" to quit work to stay closer to his mother. Order No. 24-UI-244525 Audio Record at 8:10. He informed the employer of his resignation with immediate effect.

(5) Claimant did not think of the possibility of requesting leave prior to quitting. Claimant had 40 hours of paid leave available from the employer.

(6) On September 22, 2023, claimant filed an initial claim for unemployment insurance benefits. The claim was monetarily valid. Claimant thereafter filed claims for the weeks including October 1, 2023 through December 9, 2023 (weeks 40-23 through 49-23). These are the weeks at issue. Claimant did not report conducting any work-seeking activities on his claims for the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(7) During the weeks at issue, claimant sought work as a drill operator and his labor market was Silverton, Oregon. The days and hours this work was customarily performed within that labor market were Monday through Friday, 6:00 a.m. until 6:00p.m. The work was not customarily performed at other times.

(8) Claimant immediately regretted his decision to quit working for the employer and would have begun working full-time during the weeks at issue if offered employment. Claimant's father also experienced health problems during the weeks at issue.

(9) During his employment and the weeks at issue, claimant was a member in good standing of a union that did not allow members to accept non-union work. The union dispatched members to available work. The union was aware of claimant's September 20, 2023 separation from employment and that he was thereafter seeking work. During each week at issue, claimant paid union dues and the union listed him as eligible to be dispatched to work. Claimant did not otherwise conduct work-seeking activities during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause. Claimant was able to work, available to work, and actively seeking work during the weeks at issue.

Order No. 24-UI-244525 Voluntary quit. 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)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e) in relevant part:

* * *

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off[.]

* * *

OAR 471-030-0038(1)(f) defines “a member of the individual’s immediate family,” as used in OAR 471-030-0038(1)(e)(B), above, to include “spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.”

Claimant voluntarily quit work because he wanted to stay near Battle Ground, Washington to be close to his mother while she received medical treatment. While claimant’s mother was being cared for in a rehabilitation facility, it may reasonably be inferred that claimant believed he needed to provide additional care to her, such as daily visits to the facility. However, under OAR 471-30-0038(5)(e)(B), good cause for quitting work due to “compelling family reasons” requires that claimant show that the employer failed to accommodate his request for time off. The record shows that claimant was understandably upset by the news regarding his mother’s health on September 20, 2023, and made a “rash” decision to quit work rather than requesting leave from the employer. Order No. 24-UI-244525 Audio Record at 8:10. Because claimant did not make any request for leave, he has not shown that he quit work for “compelling family reasons.”

Similarly, while claimant’s need to care for his mother may have constituted a grave situation, he had the reasonable alternative to quitting work of requesting leave. Claimant had 40 hours of paid leave available, and it can be inferred, based on his lengthy employment with the employer, that he may have qualified for a longer period of unpaid protected leave under state or federal law. Therefore, more likely than not, the employer would have granted claimant at least some period of leave if requested, and claimant could have maintained the employment relationship for an additional period of time while temporarily providing care for his mother. Accordingly, claimant has not shown good cause for quitting work under OAR 471-030-0038(5)(g) or OAR 471-030-0038(4).

Order No. 24-UI-244526 Able to work, available for work, and actively seeking work. To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c).

Able to work. The Department did not contend, and the record does not suggest, that claimant was not able to work during the weeks at issue. *See* Order No. 24-UI-244526 Audio Record at 11:06 to 11:43.

Available for work. For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by [OAR 471-030-0036(6)], every day of the week * * *.

* * *

OAR 471-030-0036(3) (March 25, 2022).

As discussed above, claimant voluntarily quit his most recent employment so that he could be closer to his ailing mother in Washington, which suggests that he may not have been available for work during the weeks at issue for that reason. The Department's representative testified that claimant was asked by the Department on December 4, 2023, "Are you available to accept a job now if it was offered to you?" and claimant responded, "Not really. My mom is on her death bed. The whole reason I quit was to help my mom out but now I am helping my mom and my dad. I just don't know how to answer that. I think I could go back to my job. They want me back." Order No. 24-UI-244526 Audio Record at 13:16. This statement further supports that claimant may not have been available for work during the weeks at issue.

However, claimant testified that when he made that statement, he had just gotten "very bad information" regarding his mother's health, and that his mother died the following day. Order No. 24-UI-244526 Audio Record at 17:17. He therefore "guess[ed] [he] wasn't very good over the phone [and] must have said something wrong." Order No. 24-UI-244526 Audio Record at 17:34. Claimant maintained that he "immediately" regretted his decision to quit work and would have accepted and begun full-time employment during the weeks at issue if offered, despite his parents' health conditions. Order No. 24-UI-244526 Audio Record at 20:20 to 20:55. Given claimant's explanation of the circumstances under which he made the December 4, 2023 statement, to the extent his testimony at hearing conflicted with that statement, his testimony is entitled to greater weight and the facts have been found accordingly. Therefore, more likely than not, claimant was willing to accept, and was capable of reporting for, full-time employment in his labor market during all of the usual hours and days of the week customary for the work of drill operator, without imposing conditions on the timing of his return to work. Accordingly, claimant was available for work during the weeks at issue.

Actively seeking work. Except as provided in OAR 471-030-0036(5)(c), and other exceptions that are inapplicable here, to be actively seeking work as required under ORS 657.155(1)(c), an individual "must conduct at least five work-seeking activities per week," with two of the five work-seeking activities

being a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a). “Direct contact” means “making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” OAR 471-030-0036(5)(a)(B).

OAR 471-030-0036(5)(c) provides:

For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union if the union dispatches its members for work. If the union does not allow its members to accept non-union work but does not dispatch their members to available work, the individual must meet the requirements of subsection (a) of this section.

The record shows that claimant did not conduct the five work-seeking activities required by OAR 471-030-0036(5)(a) during any of the weeks at issue. He therefore did not meet the requirements to be considered actively seeking work as required by ORS 657.155(1)(c), unless the exception in OAR 471-030-0036(5)(c) applies. Claimant was not permitted by his union to seek non-union work and relied on the union to dispatch him for available work. As discussed in greater detail above, claimant was capable of accepting and reporting for work during the weeks at issue if dispatched by the union. Therefore, pursuant to OAR 471-030-0036(5)(c), claimant could have actively sought work during the weeks at issue by “remaining in contact” with the union. When asked whether he remained in contact with the union during the weeks at issue, claimant testified, “I don’t know what I would need to do to remain in contact. I pay my dues; therefore, I am in contact with my union. No, I did not contact them weekly looking for work because I’m already in their system.” Order No. 24-UI-244526 Audio Record at 23:10.

On this record, claimant remained in contact with the union during each of the weeks at issue. He maintained his membership in good standing with the union by payment of dues and was noted in their records as seeking to be dispatched for work during each week at issue. It can reasonably be inferred from claimant’s testimony that he did not need to contact the union weekly to look for work that the union had accurate contact information for claimant during each week, but that the union had no reason to contact him. Therefore, claimant was “remaining in contact” with the union and thereby satisfying the work-seeking activity requirements set forth in OAR 471-030-0036(5)(c). Accordingly, claimant was actively seeking work during the weeks at issue.

For these reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective September 17, 2023. Claimant was able to work, available for work, and actively seeking work during the weeks of October 1, 2023 through December 9, 2023 (weeks 40-23 through 49-23) and is therefore eligible to receive benefits for those weeks on that basis.²

² Claimant should note that even though he is eligible for benefits for the weeks at issue on the basis of having been able to work, available for work, and actively seeking work, he will nonetheless not be paid benefits for any week unless, prior to that week, he had sufficient earnings, from work performed after he quit working for the employer, to end the work separation disqualification. *See* ORS 657.176(2).

DECISION: Order No. 24-UI-244525 is affirmed. Order No. 24-UI-244526 is set aside, as clarified herein.

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

DATE of Service: February 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.

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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.