

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0287

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 9, 2024, 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 October 29, 2023 (decision # 134910). Claimant filed a timely request for hearing. On March 7, 2024, ALJ Mellor conducted a hearing at which the employer failed to appear, and on March 14, 2024, issued Order No. 24-UI-250134, affirming decision # 134910. On March 19, 2024, claimant filed an application for review of Order No. 24-UI-250134 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Zimmer Northwest, Inc. employed claimant as an associate sales representative from May 2022 until October 31, 2023.

(2) To convince claimant to accept the offered position, the employer represented that claimant could be eligible to start earning commission in addition to his salary within three to six months after hire. Claimant understood that such commission, if any, would be allocated to him at the discretion of his manager. Claimant accepted the position, with an agreed salary of \$72,000 per year, based on this understanding. Claimant had been making approximately \$10,000 more per year at another job.

(3) Claimant requested that he receive commission at various times during his employment, but his manager declined based on business conditions. Claimant's compensation remained a salary of \$72,000.

(4) By October 2023, claimant had come to regret having left a higher-paying job to accept his job with the employer, as he did so with the belief that his compensation would exceed that of the previous job once commission was added. Claimant also came to regret the expense of required travel to customer locations, which largely went unreimbursed by the employer per the employer's established policies, and that the work required claimant to be away from his newborn child more often than claimant desired.

(5) On October 17, 2023, due to these points of dissatisfaction, claimant advised the employer of his intent to resign, effective October 31, 2023. The employer did not want claimant to perform his usual

work during the notice period, however they desired that he not compete with them in any way by working for any other employer during the notice period. Therefore, they offered to continue to pay claimant his salary through the notice period on the condition that he not work elsewhere, and claimant accepted these terms. The employer stopped paying claimant and released him from the non-compete agreement on October 31, 2023, when claimant's resignation became effective.

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 due to a reduction in pay has left work without good cause unless "the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department." OAR 471-030-0038(5)(d). An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission. OAR 471-030-0038(5)(d)(B).

Claimant voluntarily quit work because he was dissatisfied with his compensation, having to spend time away from his family due to extensive travel, and his travel expenses not being reimbursed by the employer. The order under review suggested that these points of dissatisfaction were "of claimant's own making." Order No. 24-UI-250134 at 3. This is not supported by the record, as claimant reasonably relied on the employer's representations and other factors in choosing to accept the job, and for various personal and job-related reasons, some aspects of the job did not meet claimant's expectations after more than a year. However, the record shows that claimant did not face a grave situation due to these circumstances.

Claimant left a higher-paying job to accept work with the employer based on the employer's representation that his compensation would be increased after three to six months with the addition of commission payments. Claimant testified that he did not enter into an employment contract at hire that included these terms, and that no specific criteria had been agreed upon for determining if or when claimant would be entitled to commission in addition to his salary. Audio Record at 13:08; 13:42. The employer's representations as to what claimant's future compensation *might* be were therefore unenforceable, which claimant appears to have recognized over the course of his employment when repeated requests for commission payments were denied. Further, under OAR 471-030-0038, claimant's pay cannot be considered as having been reduced by virtue of the employer's failure to agree to pay commissions that had not already been earned under an existing and enforceable commission agreement.

Claimant's regret in having left higher-paying work for what ultimately turned out to be lower-paying work is understandable, particularly because the employer suggested the situation might be otherwise when claimant was hired. Nonetheless, this did not constitute a situation of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time under the circumstances.

Similarly, claimant's dissatisfaction with the employer's travel reimbursement policy was not a grave situation. Claimant testified that he was required to travel for sales calls at various distant locations, and was told that the employer's policy was to only reimburse expenses on calls of a distance greater than 60 miles each way. Audio Record at 16:00. Claimant did not dispute that he received reimbursement in accordance with this policy, but believed the policy was unfair because many of his customers were close to, but less than, 60 miles away, resulting in significant expenses that were borne by claimant rather than the employer. This policy did not constitute an unfair labor practice unless the expenses reduced claimant's compensation to less than the statutory minimum wage.¹ As claimant's salary was \$72,000 per year, it can reasonably be inferred that the expenses did not reduce claimant's compensation below the minimum wage. Therefore, claimant did not face a grave situation due to the employer's travel reimbursement policy.

Claimant further asserted that the amount of travel required of him "wasn't worth it" and was time he "would have liked to have back" to spend with his son in the months following his son's birth. Audio Record at 15:40. However, claimant did not assert that the employer denied a request for protected leave to spend time with his son, or that he had compelling family reasons for quitting, such as the illness of a family member or being the child's only option for childcare. A preference for spending more time with family after the birth of a child is not a reason of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time. Because claimant did not face a grave situation, he has not shown that he left work with good cause.

For these reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective October 29, 2023.

DECISION: Order No. 24-UI-250134 is affirmed.

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

DATE of Service: April 30, 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.

¹ Oregon Bureau of Labor and Industries (BOLI) has concluded, "Oregon law does not require employers to pay mileage, but [an employee] can't incur any required costs that reduce the amount [they] earn to below minimum wage." <https://www.oregon.gov/boli/workers/pages/travel-time-mileage.aspx> (Retrieved April 29, 2024).

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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 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.

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