

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0341

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 19, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 5, 2023 (decision # 112129). Claimant filed a timely request for hearing. On March 5, 2024, ALJ Christon conducted a hearing, and on March 14, 2024, issued Order No. 24-UI-250121, affirming decision # 112129. On April 3, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bath and Body Works, LLC employed claimant from 2013 until November 11, 2023, most recently in a temporary remote position for the employer's home office.

(2) Claimant initially worked for the employer in retail stores in the Portland, Oregon and Salem, Oregon areas. At that time, claimant lived in the Portland metropolitan area. In March 2022, claimant and her husband put their house in the Portland area on the market to sell and claimant moved to Arock, Oregon, which is in the eastern part of the state, near the Oregon-Idaho border. Claimant resided in Arock in a house owned by a family member. For financial reasons, claimant needed to reside in Arock at the house owned by the family member, at least until their house in the Portland area sold.

(3) Upon moving to Arock in March 2022, claimant transferred to the employer's store located in Meridian, Idaho. Claimant's commute from Arock to Meridian was 210 miles round trip. Claimant worked at the Meridian store, making the 210-mile commute, from mid-March 2022 until near the end of May 2022.

(4) Near the end of May 2022, the employer offered claimant a temporary remote position performing work for the employer's home office. The temporary position had a defined end date, with the potential for an extension of the end date, based on business needs. The employer's policy was that when an employee accepts a temporary position, their existing job is held for them to return to when the

temporary position ends. Claimant accepted the temporary remote position and performed the remote work. This temporary position ended in August 2023.

(5) In August 2023, coinciding with the end of claimant's first temporary remote position, the employer offered claimant a second temporary remote position. The position had an estimated end date of November 4, 2023. Claimant accepted this position and performed the remote work.

(6) While working in the second temporary remote position, claimant coordinated with the employer to look for another remote position to be placed in after the temporary remote position ended, or to have her temporary remote position extended. Per the employer's policy, claimant's job at the Meridian store was available for her to return to after the temporary remote position ended. However, because of the long commute, claimant informed the employer that she did not intend to return to the job at the Meridian store when her temporary remote position ended. Although claimant previously commuted to Meridian and back for about two and half months in the spring of 2022, "with the winter coming on, . . . [she] did not think it would be possible to do the . . . 200-plus mile commute each day," if she returned to the position at the Meridian store. Transcript at 15.

(7) While claimant was working in the second temporary remote position, a district manager informed claimant that a job was available at another of the employer's stores, a store located in Boise, Idaho. The Boise store was about the same distance away from claimant's home in Arock as the Meridian store. Claimant advised that she was not interested in taking the job at the Boise store when her temporary remote position ended.

(8) Claimant's supervisor extended the end date of claimant's temporary remote position to November 11, 2023. However, no other remote positions were available to be offered to claimant when claimant's temporary remote position ended.

(9) On November 11, 2023, claimant voluntarily quit working for the employer because her temporary remote position ended and she declined to work at the Meridian store due to the long commute.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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. OAR 471-030-0038(5)(f) states "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 action of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule."

The order under review concluded that claimant voluntarily left work without good cause because she failed to return to the job at the Meridian store or take the job at the Boise store when her temporary remote position ended. Order No. 24-UI-250121 at 3. The order also concluded that the long commute to Meridian “might be considered a grave situation” but because claimant chose to move to Arock, the gravity of the situation was self-created. Order No. 24-UI-250121 at 3. The record does not support these conclusions.

Claimant voluntarily left work with good cause. Claimant faced a grave situation because, after November 11, 2023, continuing to work for the employer would have required her to make a 210-mile round trip commute for the employer every day she worked at the Meridian store. Claimant had previously commuted to Meridian and back for about two and half months in the spring of 2022. However, returning to the Meridian store after her second temporary remote position ended would have required her to make the commute beginning in mid-November and thereafter, and claimant credibly testified at hearing that “with the winter coming on, and all of that, I did not think it would be possible to do the . . . 200-plus mile commute each day.” Transcript at 15. Given that the commute was exceedingly long, and claimant would have had to drive during a time of year when there was a likelihood of encountering dangerous driving conditions due to inclement winter weather, returning to work at the Meridian store presented claimant with a grave situation.

The gravity of the situation claimant faced was not self-created. Claimant took the job transfer to the Meridian store and moved to Arock. However, about a year and eight months elapsed between the time claimant moved to Arock in March 2022 and when she quit working for the employer in November 2023. In that time, the employer offered, and claimant worked, two consecutive temporary remote positions for the employer. This passage of time and the employer’s actions enabling claimant to maintain her employment with them while she continued to reside in Arock tend to show that at the time claimant quit work, a variety of factors, including employer’s discontinuation of claimant’s ability to work remotely after allowing her to do so for more than a year, were responsible for the gravity of the situation she faced. Moreover, claimant’s decision to move into her family member’s house in Arock was, more likely than not, motivated by financial necessity rather than personal preference. At hearing, claimant testified that the Arock house was a vacant house owned by a family member, the record supports the inference that she paid low or no rent to live there, and she “was not financially in a place to either rent or attempt to buy” elsewhere until her house in the Portland area had sold. Transcript at 16. The record therefore suggests that claimant’s decision to move to Arock was constrained by financial considerations over which she may have had little control. Given that a variety of factors were responsible for the gravity of the situation claimant faced and that her move to Arock was a matter of financial necessity, it cannot be said that the gravity of the situation claimant faced years later when she quit was self-created.

Claimant pursued reasonable alternatives prior to quitting, but to no avail. While working in the second temporary remote position, claimant coordinated with the employer to look for another remote position to be placed in after the temporary remote position ended, or to have her temporary remote position extended. She succeeded in obtaining a short extension, but only from November 4, 2023, to November 11, 2023. No other remote positions were available to claimant. To return to the job at the Meridian store was not a reasonable alternative to quitting. As discussed above, to do so would have required claimant to make a 210-mile round trip commute during a time of year when she was likely to encounter dangerous winter driving conditions. To take the job at the Boise store was likewise not a reasonable

alternative to quitting. The Boise store was about the same distance away from claimant's home in Arock as the Meridian store. Therefore, to work at the Boise store would have required claimant to make a similar, exceedingly long commute each day she worked for the employer and to do so while contending with potentially dangerous winter driving conditions.

Accordingly, claimant quit working for the employer because of a reason of such gravity that she had no reasonable alternative but to leave work when she did. She therefore voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-250121 is set aside, as outlined above.

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

DATE of Service: May 16, 2024

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 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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