

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0351

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 28, 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 November 19, 2023 (decision # 81244). Claimant filed a timely request for hearing. On April 1, 2024, ALJ Contreras conducted a hearing at which the employer failed to appear, and on April 2, 2024, issued Order No. 24-UI-251336, affirming decision # 81244. On April 8, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's 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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Davis Tools employed claimant as an entry-level machinist from November 14, 2023, until November 20, 2023. Claimant's work schedule was Monday through Friday, 7:00 a.m. to 3:30 p.m. The employer also operated during swing and graveyard shifts.

(2) Claimant lived approximately 20 to 30 miles away from the employer's worksite. Prior to accepting the job, claimant drove from his home to the worksite and back twice, both times in the early afternoon. Each trip took claimant approximately 26 minutes one-way.

(3) From Tuesday, November 14, 2023, through Friday, November 17, 2023, claimant's 3:30 p.m. commute home lasted between 58 and 88 minutes. Claimant used three different routes over those four days in attempts to shorten the duration of the commute. Claimant was unhappy with the duration of the commute because he preferred to spend that time doing other things. Claimant also experienced temporary "discomfort" in his back due to the length of the commute, for which he did not seek medical treatment. Audio Record at 9:15.

(4) On the morning of Monday, November 20, 2023, claimant twice telephoned the employer's human resources department to voice his displeasure at the commute. He was unable to reach anyone and left a voicemail. He also sent them an email later that day expressing his displeasure at the commute and stating that he was resigning with immediate effect for that reason. He did not work for the employer thereafter. Claimant had no other points of dissatisfaction with the job.

(5) Claimant believed that the employer would not permit modification of his work hours such that his shift would end earlier in the afternoon before traffic increased, though he did not inquire about this with the employer. Claimant understood that he could request to change to another of the three shifts the employer offered, but did not want to do so because he preferred to spend time with his significant other in the evening and to maintain his current sleeping pattern.

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.

Claimant quit working for the employer due to the duration of his commute home during the first four days of his employment. These drives lasted between 58 and 88 minutes, depending on the day and the route taken. Claimant understandably preferred to have spent more of this time on activities other than driving home from work, and to not experience temporary back discomfort during prolonged periods of driving. However, he has not shown that a commute of this duration was a reason of such gravity that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work under the circumstances. Claimant denied, for example, that the commute presented childcare issues or similar obligations that necessitated his arrival home from work at a certain time, or that it resulted in more than minor physical discomfort while he was driving. Audio Record at 8:47 to 9:39. Claimant has therefore not met his burden of showing that he quit work due to an objectively grave situation.

Further, even if the commuting time had constituted a grave situation, claimant failed to seek reasonable alternatives to leaving work. The order under review suggested that claimant had an alternative of continuing to work for the employer while he sought similar work with a shorter commute time. Order No. 24-UI-251336 at 2. However, continuing to work for the employer while seeking employment elsewhere is not a reasonable alternative to quitting. *Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010). Nonetheless, the record suggests that the employer may have been able to resolve or to some degree alleviate claimant's complaint about his commute. That the duration of the commute varied so greatly between 1:00 p.m. and 3:30 p.m. suggests that a relatively minor modification to his work schedule may have significantly shortened his commute time. However, claimant quit the same day he first left a message for the employer regarding his displeasure with the commute time, without receiving

a response from the employer. It would have been reasonable for claimant to allow further time for the employer to respond, or for him to escalate the matter until he received a response, prior to resigning. Claimant did not demonstrate that it would have been futile to at least discuss with the employer, who operated three shifts per day, whether accommodations could be made to his schedule to reduce his commute time.

While claimant testified that he was unwilling to work a swing or graveyard shift, his reasoning suggests this unwillingness was not a matter of necessity due to other unavoidable obligations, but a matter of preference to spend evenings with his significant other and maintain a typical sleep schedule. Audio Record at 11:55. Such a preference may render the alternative undesirable to claimant, but not objectively unreasonable. Accordingly, claimant has not shown that he had no reasonable alternative but to leave work when he did.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective November 19, 2023.

DECISION: Order No. 24-UI-251336 is affirmed.

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

DATE of Service: May 22, 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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