

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0371

Modified
Request to Granted
No Disqualification

PROCEDURAL HISTORY: On January 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective October 1, 2023 (decision # 70331). Claimant filed a timely request for hearing. On January 25, 2024, notice was mailed to the parties that a hearing was scheduled for February 8, 2024. On February 8, 2024, ALJ Adamson convened a hearing at which claimant failed to appear, and issued Order No. 24-UI-247685, dismissing claimant's request for hearing due to his failure to appear. On February 12, 2024, claimant filed a timely request to reopen the hearing. On March 7, 2024, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on March 13, 2024, issued Order No. 24-UI-250005, granting claimant's request to reopen and modifying decision # 70331 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective January 7, 2024.¹ On March 15, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-250005 granting claimant's request to reopen the February 8, 2024, hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-250005 is **adopted**.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) First Student, Inc. employed claimant as a school bus driver from approximately June 2021 until January 12, 2024.

¹ Although Order No. 24-UI-250005 stated that it affirmed decision # 70331, it modified that decision by changing the effective date of the disqualification from October 1, 2023, to January 7, 2024. Order No. 24-UI-250005 at 5.

(2) In September 2023, claimant spoke with the employer about taking leave for a prepaid vacation he had planned for October 6, 2023, through October 26, 2023. The employer told claimant that they would not approve his leave for this period.

(3) On September 20, 2023, claimant gave the employer notice of his intent to resign, effective October 6, 2023, due to the employer refusing his request for leave.

(4) On October 4, 2023, the employer asked claimant to rescind his resignation and agreed to grant claimant leave for the period he had requested. Claimant agreed and rescinded the resignation before it took effect.

(5) On October 26, 2023, claimant returned from his vacation and within a few days informed the employer that he was ready to resume working. The employer scheduled his next shift for October 31, 2023, which claimant worked. Claimant continued to work thereafter as scheduled.

(6) On January 8, 2024, claimant notified the employer of his intent to resign effective January 12, 2024.

(7) On January 9, 2024, the Department issued decision # 70331, concluding that claimant quit working for the employer on October 6, 2023, and was disqualified from receiving benefits effective October 1, 2023.

(8) Claimant did not perform work for the employer after January 12, 2024.

CONCLUSIONS AND REASONS: Claimant did not separate from employment with the employer on or about October 6, 2023, or prior to the issuance of decision # 70331.

ORS 657.176(2) provides, in relevant part, that an individual shall be disqualified from the receipt of benefits if that individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;

* * *

If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If an employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

The order under review concluded that claimant quit work on January 12, 2024. Order No. 24-UI-250005 at 5. The record supports this conclusion insofar as it also implicitly concludes that claimant did not separate from work prior to the January 9, 2024, issuance of decision # 70331. The issue of whether

a potentially disqualifying work separation occurred *after* the issuance of decision # 70331 was not before the Office of Administrative Hearings (OAH) in this appeal.

The record shows that on September 20, 2023, claimant notified the employer of his intent to resign effective October 6, 2023. However, the employer did not accept the resignation and allowed claimant to rescind it on October 4, 2023, before it took effect. The employment relationship was maintained during claimant's leave by agreement of the parties, and claimant resumed performing his usual work for the employer when the leave period ended. Accordingly, there was no cessation of the employment relationship prior to January 9, 2024, and therefore no work separation for purposes of ORS 657.176.

For these reasons, decision # 70331, concluding that a work separation had occurred prior to its January 9, 2024, issuance, must be set aside rather than modified.² As of January 9, 2024, claimant was not disqualified from receiving unemployment insurance benefits based on a work separation from the employer.

DECISION: Order No. 24-UI-250005 is modified, as outlined above.

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

DATE of Service: May 3, 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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² EAB's decision does not affect the Department's ability to issue any administrative decision concluding that claimant separated from this employer on or after January 9, 2024. EAB makes no determination in this decision whether such a separation occurred or would disqualify claimant from benefits.



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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