

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0392

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 26, 2023 (decision # 114335). Claimant filed a timely request for hearing. On March 26, 2024, ALJ Chiller conducted a hearing, and on April 4, 2024 issued Order No. 24-UI-251567, affirming decision # 114335. On April 23, 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) The Oregon Institute of Technology employed claimant, most recently as an assistant professor in their Emergency Medical Services (EMS) department, from September 7, 2010 until November 30, 2023. During his employment, claimant worked at the employer’s campus in Wilsonville, Oregon. The employer’s main campus was in Klamath Falls, Oregon.

(2) On September 7, 2010, the employer hired claimant as a part-time instructor, working the equivalent of fifty percent of a full-time employee. Claimant’s annual salary was \$25,000. At time of hire, the employer did not give claimant additional pay to account for the cost of living or working in the Wilsonville area. On July 1, 2011, the employer promoted claimant to full-time instructor and increased his annual salary to \$50,004.

(3) In 2017, claimant was the interim chair of the EMS department. Claimant gained access to budget information while serving as interim chair and discovered that all faculty members in his department except for him and one other individual had received what the employer called a “geographical COLA stipend[.].” Transcript at 8. The faculty members who received the geographical COLA stipend

received an extra \$7,800 in their salaries to account for the cost of living or working in the Wilsonville area. The geographical COLA stipend was typically negotiated at the time of the initial job offer, though the rules governing whether and when to provide the stipend were not in writing.

(4) After learning of the geographical COLA stipend, claimant told the employer's dean that most faculty members in his department had received the stipend except for him. The dean did not give claimant the stipend, citing, among other reasons, that the stipend is typically negotiated at the time of a job offer, which did not occur when claimant was hired as a part-time instructor. Over the years thereafter, claimant brought up with the employer the fact he had not received the geographical COLA stipend "quite a bit" but he never received it and the issue remained unresolved. Transcript at 10.

(5) Claimant was dissatisfied with his salary. Claimant understood that faculty members typically received a 10% salary increase when the employer promoted them from instructor to assistant professor. However, to get promoted from instructor to assistant professor required claimant to complete a master's degree and a portfolio. At some point after 2017 but before 2021, claimant began the process of completing a master's degree and a portfolio to facilitate getting a promotion to assistant professor and the resulting salary increase.

(6) In or around 2020, claimant and the other faculty members formed a union. The union negotiated a collective bargaining agreement (CBA) that went into effect on June 1, 2020. The CBA permitted giving individual salary increases to faculty on a case-by-case basis. However, whereas previously faculty members typically received a 10% salary increase when the employer promoted them from instructor to assistant professor, the CBA did not specifically include salary increases for faculty members promoted from instructor to assistant professor.

(7) A provision of the CBA required the employer to conduct an internal pay equity study to ensure that similarly situated faculty members received similar pay. On or about the June 1, 2020 effective date of the CBA, the employer began conducting the pay equity study. The employer's administrative leadership informed their human resources department that they should not make any adjustments to the salaries of faculty members until the pay equity study was complete.

(8) On July 1, 2021, the employer promoted claimant from instructor to an assistant professor in the EMS department. Though claimant had completed a master's degree and portfolio to get the promotion, claimant did not receive a salary increase upon being promoted from instructor to assistant professor.

(9) Periodically throughout 2022 and 2023, while the pay equity study was ongoing, claimant raised his dissatisfaction with not having received the geographical COLA stipend or the 10% salary increase with the dean and claimant "kept getting . . . no results." Transcript at 22. In these discussions, claimant felt pressured by the dean to take over positions of administrative responsibility within the EMS department. Claimant insisted that the employer increase his salary before he would consider taking a role with more responsibility, and the dean would reply that claimant "was playing hardball." Transcript at 21. The discussions with the dean regarding claimant's salary gave claimant anxiety, which made interactions with the dean uncomfortable and had a negative impact on claimant's connection with his family.

(10) By 2023, claimant's annual salary had risen to \$70,416, primarily because of periodic cost of living increases. Claimant remained dissatisfied with his salary and felt it did not account for high inflation and was unfair because people working under him were getting paid more than him.

(11) In the summer of 2023, while the pay equity study was ongoing, claimant approached the dean and asked for a resolution regarding claimant's view that he was not paid enough. Claimant felt that, in response, the dean "never really communicated about it[.]" Transcript at 22. Thereafter, claimant decided to quit working for the employer. Claimant knew the pay equity study was in progress at the time, but believed that the study did not consider salary compression and only looked at ethnic and racial inequities, so he "thought it was pretty much over by the time [he] made the decision to resign[.]" Transcript at 43. In August 2023, claimant gave notice to the employer of his intent to resign effective November 30, 2023.

(12) On November 1, 2023, the employer completed their pay equity study. Claimant received a pay equity increase that raised his salary to \$74,998 with the increased salary retroactive to January 1, 2023.

(13) On November 30, 2023, claimant voluntarily quit working for the employer as planned. Claimant quit because he was displeased with his salary, including not having received either the geographical COLA stipend or a 10% raise upon promotion to assistant professor. Claimant also quit because of the anxiety and resulting negative impact on claimant's connection with his family that the salary discussions with the dean had caused.

(14) In December 2023, claimant began seeing a psychologist, who determined that claimant had depression. Thereafter, with the psychologist's assistance, claimant "built up [his] mental health" and improved his connection with his family. Transcript at 23.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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.

The record does not establish that claimant had good cause to leave work. Claimant quit in part because of his dissatisfaction with his salary, including not having received either the geographical COLA stipend or a 10% raise upon promotion to assistant professor. The record shows that as of claimant's November 30, 2023 resignation date, his annual pay was \$74,998, which was an increase of approximately \$4,500 increase. This was the result of the employer's pay equity analysis, and was retroactive to January 1, 2023. Claimant did not face a grave situation based on his annual salary at the time he quit.

At the time he quit, claimant's salary was not an insubstantial figure, and reflected an increase that the employer considered was necessary to rectify what it regarded as claimant's previously inequitable pay. Claimant expressed at hearing that he felt his salary at the time he quit did not account for inflation and was unfair because people working under him were earning more than him. Transcript at 20-21. The effects of inflation likely diminished the real value of claimant's salary, and it apparently seemed unfair to claimant that individuals ranked lower than him earned more than he did. Nevertheless, claimant did not offer evidence to show that his salary was so low that it placed him in financial distress, that the cost of working for the employer was more than the amount claimant earned from them, or that quitting his job and reducing his income to zero was a better option for managing high inflation than simply staying in his job. *See Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work).

As to claimant's failure to receive either the geographical COLA stipend or a 10% pay raise upon promotion to assistant professor, the employer's actions in these respects did not present claimant with a grave situation. The record does not show that in either case, the employer's actions amounted to unfair or illegal labor practices as might be sufficient to establish good cause to quit. The record contains facts that may explain why the employer failed to provide claimant the geographical COLA stipend. First, there is evidence suggesting that the stipend was only provided to faculty members who negotiated it at the time their job offer was made, which did not occur with claimant when he was hired as a part-time instructor. Transcript at 32-33, 41. Second, following the June 1, 2020 effective date of the CBA, the employer began conducting their pay equity study, and the employer's administrative leadership instructed their human resources department not to make any adjustments to the salaries of faculty members until the pay equity study was complete. While it is unknown whether claimant was specifically aware of the instructions given to the human resources department, claimant knew that the pay equity study was ongoing as of 2022 and 2023, during the time he was raising his dissatisfaction with his pay to the dean and "kept getting . . . no results." Transcript at 22, 42. It is plausible that a reason the dean took no action during that time was because the pay equity study was not complete.

Likewise, as to the employer's failure to provide claimant with a 10% pay raise upon his promotion to assistant professor, the CBA governing claimant's employment specifically did not include salary increases for faculty members promoted from instructor to assistant professor. It is regrettable that prior to the effective date of the CBA, the employer typically paid faculty members the 10% increase upon promotion from instructor to assistant professor, and that, in apparent reliance on this practice, claimant went to the effort of completing a master's degree and portfolio as required to be eligible for the promotion. Even so, the record shows that as of the date of claimant's July 1, 2021 promotion, the CBA was in effect. It cannot be said that the employer presented claimant with a grave situation by treating him in accordance with the CBA.

Aside from his dissatisfaction with his pay itself, claimant also quit because his discussions with the dean regarding his pay gave him anxiety, which made interactions with the dean uncomfortable and negatively impacted claimant's connection with his family. Transcript at 22-23. In his written argument, claimant asserted that the employer subjected him to extensive "gaslighting" and "belittling" beginning in 2017 upon his discovery of the geographical COLA stipend. Written Argument at 1. However, at hearing, the only incidents claimant offered of treatment that caused him anxiety involved interactions with the dean in 2022 and 2023 when claimant would raise his dissatisfaction with his pay and the dean

would take no action, as well as feeling pressure from the dean in those discussions to take over positions of administrative responsibility. Transcript at 21-23. Claimant further testified that after he quit, in December 2023, claimant began seeing a psychologist, who determined that claimant had depression. Transcript at 24-25. Thereafter, with the psychologist's assistance, claimant "built up [his] mental health" and improved his connection with his family. Transcript at 23.

Claimant did not meet his burden to establish good cause to leave work based on this reason. To the extent claimant's interactions with the dean induced anxiety that harmed claimant's connection with his family, the record suggests claimant could have avoided discussing the subject of his pay with the dean in 2022 and 2023 and awaited the results of the pay equity study. It was reasonable to conclude that the dean could not address the matter of claimant's pay until the study was complete. Furthermore, after claimant's resignation, claimant received treatment from a psychologist. The record does not show any reason why claimant could not have sought the help of the psychologist before he quit, who may have enabled claimant to improve his mental health and family connection without quitting work. Therefore, to the extent claimant's anxiety and worsened family connection resulting from the difficult interactions with the dean presented him with a grave situation, he failed to pursue the reasonable alternative of seeking help from the psychologist before quitting work.

Next, in claimant's written argument, claimant asserted, based largely on evidence extraneous to the hearing record, that he benefited from quitting work because doing so enabled him "to have 100% of my time allocated to childcare, which helped my partner and I two-fold on childcare costs[.]" Written Argument at 1. The record is devoid of evidence that claimant was experiencing high childcare costs when he left work or that quitting work to transition into a role of providing childcare for his children was why he quit. Claimant asserted in his argument that "[i]nflation and the rising cost of childcare for my 3- and 6-year-old daughters plaid [*sic*] a pivotal role in making this decision to resign." Written Argument at 1. However, the only facts claimant offered into evidence at hearing about his children was that he had "a couple kids" and, as mentioned above, that his anxiety from work worsened his connection to them. Transcript at 43, 23. Further, claimant was asked at hearing how he benefited from quitting work given that he believed that his pay was unfairly low, whereas quitting work would deprive him of any pay at all. Transcript at 24. In response, claimant did not mention childcare, instead stating that quitting would improve his situation by allowing him to "focus on my mental health and get myself straight by disconnecting from the space, and focus on making monies in the future[.]" Transcript at 24. As quitting work to transition into a role of providing childcare for his children was not mentioned as a reason for claimant's quit at hearing, it is not warranted to consider whether it would have constituted good cause for claimant to quit.

Otherwise, claimant's written argument makes assertions that the employer's pay equity study was flawed and that when one considers the geographical COLA stipend he did not receive, his annual salary should have been \$93,000. Written Argument at 1. Even if these contentions are accurate, they are not material. The record shows that by 2023, claimant's annual salary had risen to \$70,416 and that the pay equity study raised it further to \$74,998, retroactive to January 1, 2023. While claimant may have had good reason to believe the employer should have paid him more, claimant did not establish good cause to quit based on his dissatisfaction with his pay.

For these reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective November 26, 2023.

DECISION: Order No. 24-UI-251567 is affirmed.

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

DATE of Service: June 7, 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 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
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