EO: Intrastate
BYE: 28-Dec-2024

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

679
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0511

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 18, 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 December 24, 2023 (decision # L0003212904). Claimant filed a timely request for hearing. On May 3, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 15, 2024. On May 15, 2024, claimant failed to appear for the hearing, and ALJ Contreras issued Order No. 24-UI-254196, dismissing the hearing request on decision # L0003212904 due to claimant's failure to appear. On May 15, 2024, claimant filed a timely request to reopen the May 15, 2024, hearing. On June 7, 2024, ALJ Buckley conducted a hearing at which the employer failed to appear, and on June 12, 2024, issued Order No. 24-UI-256369, allowing claimant's request to reopen, cancelling Order No. 24-UI-254196, and affirming decision # L0003212904. On June 21, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on July 11, 2024, and July 12, 2024. In claimant's July 12, 2024, written argument, claimant requested that EAB disregard her July 11, 2024, written argument. Per claimant's request, EAB did not consider claimant's July 11, 2024, written argument in reaching this decision. Claimant's July 12, 2024, 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 her 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.

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-256369 allowing claimant's request to reopen the May 15, 2024, hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-256369 is **adopted.** The remainder of this decision addresses whether claimant voluntarily left work with good cause.

FINDINGS OF FACT: (1) Starfire Lumber Co. employed claimant, most recently as a sales assistant, from July 2021 until December 25, 2023.

(2) For most of her tenure with the employer, claimant worked as a log accountant. Claimant worked full time and earned approximately $21 per hour as a log accountant.

(3) Claimant had a 10-year-old son. Claimant shared custody of her son with her ex-husband, and the two had an arrangement in which the child lived with claimant every other week. During the 2022 school year, the start time of claimant's son's school was 8:00 a.m. Because it took an hour to get from the school to claimant's work, the earliest claimant could get to work on days she took her son to school was 9:00 a.m.

(4) Although claimant's usual shift start time was 8:00 a.m., the employer allowed claimant to arrive at 9:00 a.m. on days she took her son to school. This caused claimant to lose an hour of work every day on weeks she had custody of her son during the school year. On weeks when claimant had custody of her son during the summer, claimant arrived to work at the usual 8:00 a.m. start time because the employer allowed claimant to bring her son to work.

(5) Claimant's usual shift end time was 4:30 or 5:00 p.m. On weeks when claimant had custody of her son during the summer, claimant left work at the usual end time because her son was present with her at work. On weeks when she had custody of her son during the school year, claimant typically could not work late to make up the time lost due to the 9:00 a.m. arrival because she had to leave the office at 4:30 or 5:00 p.m. to pick up her son from childcare by 6:00 p.m. However, when claimant worked as a log accountant, the employer allowed claimant to work overtime on the weeks when she did not have custody of her son to make up the lost time on weeks she did have her son.

(6) In May 2023, the employer informed claimant that they did not think she was a good fit as a log accountant and would transfer her to a job as a sales assistant. On June 28, 2023, claimant began working as a sales assistant, working full time and earning approximately $21 per hour, the same wage she had earned as a log accountant. Claimant struggled in the sales assistant position. In early to mid-July 2023, claimant learned that she was not eligible to work overtime in the sales assistant position, as she had when she worked as a log accountant.

(7) The usual shift start time for claimant's sales assistant job was 8:00 a.m. In mid-July 2023, claimant learned that her son's school's start time for the upcoming school year was going to change to 9:00 a.m., which would cause claimant to begin arriving at work at 10:00 a.m. The school year was to begin in mid-September 2023. The employer told claimant they would allow claimant to arrive at 10:00 a.m. on days she had custody of her son during the school year.

(8) Claimant continued to struggle in the sales assistant job. Between June 28, 2023, and August 21, 2023, claimant made three mistakes in placing orders. However, each time claimant made these mistakes, the employer caught the errors before the mistakes caused any harm. The employer did not write up claimant or discipline her for her mistakes in placing orders.

(9) The employer was unhappy with claimant's performance as a sales assistant. On September 1, 2023, the employer presented claimant with two options. The first option was to continue working as a sales

assistant, but would require claimant to improve her speed and accuracy in placing orders, take a class on how to use Microsoft Excel, and learn the accounting software the employer used. If claimant had not fulfilled these requirements by December 25, 2023, the employer would terminate her employment on that date. The second option was to voluntarily leave work, effective December 25, 2023, and receive her regular pay through that date without having to perform her work duties.

(10) On or about September 8, 2023, claimant informed the employer that she would take the second option by voluntarily leaving work effective December 25, 2023, and receiving her regular pay through that date without having to perform her work duties. On December 25, 2023, claimant quit working for the employer.

(11) One reason claimant quit work was because she thought she could not improve her speed and accuracy in placing orders, successfully complete a Microsoft Excel class, or learn the employer's accounting software, and therefore would eventually be discharged. Claimant was "scared" that she would make more mistakes in placing orders and cost the employer money. Transcript at 10. Claimant did not think she could successfully complete an Excel class because she had briefly started to take an Excel class in March of 2022 and made some spreadsheets for her manager at the time, but found that her manager had changed the spreadsheets she had created and then stopped requiring her to use Excel. Claimant did not think she could learn the accounting software the employer used because she was unsure whether a class was available for it and thought it would be difficult for a colleague to teach her on the job because they would be busy carrying out their work duties.

(12) Another reason claimant quit was that, with the start of the new school year, she would have to arrive to work at 10:00 a.m. on days she took her son to school, which would cause her to lose two hours of work every day on weeks she had custody of her son during the school year, one more hour per day than she had lost during the previous school year. Claimant would not be able to make up the lost time by working overtime for the employer in weeks she did not have her son, because claimant was not eligible to work overtime in the sales assistant position. Claimant could not work late to make up the lost hours on weeks she had custody of her son because she had to leave the office at 4:30 or 5:00 p.m. to pick up her son from the childcare center by 6:00 p.m.

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 hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant failed to meet her burden to show that she left work with good cause. One reason claimant took the employer's first option and quit was that she did not think she could fulfill the requirements of improving her speed and accuracy in placing orders, taking a class on how to use Microsoft Excel, and learning the accounting software the employer used, and therefore would be discharged on December 25, 2023. While quitting work to avoid a discharge can constitute good cause, for a claimant to face a grave situation in such a scenario, it is typically necessary for the discharge to be imminent, inevitable, and for the claimant to show that being discharged would harm future job prospects. *See McDowell v. Employment Dep't*., 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects).

Here, being discharged was not imminent and inevitable because it was entirely possible that if claimant had taken the first option, she would have met the requirements by December 25, 2023. First, if claimant had committed to improving her speed and accuracy in placing orders it is not evident that she would not have made progress in those areas and the record supports that the employer would have given claimant the latitude to make mistakes in order to improve. Claimant made three errors in placing orders between June 28, 2023, and August 21, 2023, and was "scared" she would make more mistakes in placing orders that would cost the employer money. Transcript at 10. However, the employer had caught claimant's previous errors without them doing any harm and did not discipline claimant for them. Next, claimant did not think she could successfully complete a Microsoft Excel class because previously, in March 2022, she had briefly started an Excel class and made some spreadsheets for her manager, who changed the spreadsheets and then stopped requiring claimant to use Excel. However, because claimant ceased taking the class shortly after it had begun because her manager removed using Excel from her duties, this prior experience did not mean that claimant would fail to successfully complete such a class if she gave her best effort and took the class from start to finish. Finally, claimant did not think she could learn the accounting software the employer used because she was unsure whether a class was available for it, and thought it would be difficult for a colleague to teach her on the job. While the need for claimant's work colleagues to carry out their own work duties may have complicated claimant's ability to learn the accounting software from others, claimant failed to show that a class on the software likely was not available or that she would have been unable to learn the software in an unobtrusive manner by shadowing her colleagues and observing them use it.

Furthermore, even if claimant had failed to meet some of the requirements of the employer's first option, it is not evident that being discharged would have been imminent and inevitable. The record shows that the employer was accommodating in their treatment of claimant, considering that they had transferred her to be a sales assistant after concluding she was not a good fit as log accountant, that they were lenient regarding the mistakes she made when placing orders as a sales assistant, that they had allowed her to arrive later in the mornings when she had custody of her son in the school years and to bring her son to work in the summers. In light of these facts, it is not certain that the employer would have discharged claimant on December 25, 2023, if she failed to fulfill the requirements of their first option, particularly if she had shown some improvement in one or more of the areas the employer identified. For these reasons, claimant did not establish that her concern that she would not fulfill the requirements under the employer's first option and would be discharged on December 25, 2023, was a circumstance of such gravity that she has no reasonable alternative but to quit when she did.

Another reason claimant quit was that, with the start of the new school year in mid-September 2023, she would have to arrive to work at 10:00 a.m. on days she took her son to school, which would cause her to lose two hours of work every day on weeks she had custody of her son during the school year. Because claimant had an arrangement with her ex-husband in which claimant's son lived with her every other week, this would amount to claimant working ten fewer hours every other week during the school year, or 20 fewer hours of work per month during the school year. While a reduction from 160 hours per month to 140 hours per month for the duration of the school year, or approximately nine months out of the year, is not insignificant, claimant failed to show that the reduction in hours she would experience amounted to good cause under OAR 471-030-0038(5)(e). Under that provision, when one leaves work due to a reduction in hours, the voluntary leaving is without good cause unless continuing to work substantially interferes with returning to full time work or unless the cost of working exceeds the amount of remuneration received.

Claimant did not show that continuing to work 140 hours per month for the employer for nine months out of the year would interfere with a return to full time work. Simply remaining in the sales assistant position and enduring the 20 fewer hours of work per month during the school year would effectuate a return to full time work because, had claimant continued working through the 2023-2024 school year and then reached the summer months, claimant likely would have been allowed to bring her son to work as she had in the past, could start her shifts at 8:00 a.m. instead of 10:00 a.m., and therefore would be able to work a full time schedule of 40 hours per week.[1] Similarly, claimant did not show that the cost of working for the employer, such as her commuting costs, would be more than the amount of her remuneration received when working 140 hours per month, which would amount to about $2,940 per month.[2]

For the foregoing reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective December 24, 2023.

DECISION: Order No. 24-UI-256369 is affirmed.

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

DATE of Service: <u>July 25, 2024</u>

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] *See* OAR 471-030-0022 (January 11, 2018) ("'Full-time work,' for the purposes of ORS 657.100 is 40 hours of work in a week except in those industries, trades or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.").

[2] 140 hours x $21 = $2,940.

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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