

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0514

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 2, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0003353011). The employer filed a timely request for hearing. On June 5, 2024, ALJ Strauch conducted a hearing, and on June 11, 2024, issued Order No. 24-UI-256196, reversing decision # L0003353011 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 31, 2023. On June 20, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) LPLS, LLC employed claimant as a general manager of one of their convenience stores from January 4, 2017, until December 31, 2023.

(2) As a general manager, claimant received a base salary of \$44,000. In 2023, he also received bonus pay of approximately \$6,000 to \$7,000. On average, claimant worked 55 to 60 hours per week in this role and received additional compensation when he worked on the sixth or seventh day in a workweek.

(3) In December 2023, the employer announced a management restructuring, wherein four district managers would each oversee two of the employer's stores, eliminating the general manager position at each store. The employer already had two district managers, and the six general managers whose positions were being eliminated, including claimant, were invited to apply for the two vacant district manager positions. Claimant applied but was not given a district manager position. The employer also considered claimant for one of two new assistant district manager positions, but he was not selected.

(4) The employer informed claimant that effective January 1, 2024, he would be demoted to the position of opening team leader (OTL) as a result of the elimination of the general manager position. OTL was a full-time, hourly position which was eligible for overtime pay, with many of the same responsibilities as general manager. The base wage amounted to \$41,000 per year. Claimant would not be eligible for the bonus pay he previously received.

(5) Claimant complained to his superiors about his dissatisfaction with the elimination of his position and with being demoted. The employer believed that claimant had the potential to earn more than his general manager salary by working a similar number of hours as he had been, when factoring in that he would now be eligible for overtime pay. Claimant doubted that sufficient overtime hours would be available to him and disliked that he would likely have to work some of those hours at other stores. He also disliked that he would be working as an equal to employees he previously supervised. The employer did not change their restructuring plans after hearing claimant's complaints.

(6) On December 24, 2023, claimant gave written notice to the employer of his intent to resign, effective December 31, 2023. Claimant did not work for the employer after December 31, 2023. Claimant resigned due to his dissatisfaction with the impending demotion.

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 pay has left work without good cause unless "the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department." OAR 471-030-0038(5)(d). However, "[t]his section applies only when the employer reduces the rate of pay for the position the individual holds. **It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.**" OAR 471-030-0038(5)(d)(A) [emphasis added].

Claimant voluntarily quit work because the employer demoted him to OTL when his general manager position was eliminated in a restructuring of the employer's operations. The parties offered differing projections of how this would ultimately affect claimant's compensation, with the employer suggesting that claimant would earn more compensation for roughly the same number of hours worked, while claimant doubted that he would be offered enough overtime to earn the same amount as he had previously, and did not want to "chase" overtime by traveling to different stores to work. Transcript at 10. Even if claimant's projection was correct and he earned only \$41,000 in 2024 because he worked no overtime and received no bonuses, the reduction in pay provisions of OAR 471-030-0038(5)(d) are inapplicable because any reduction would have been the result of a demotion. Instead, the gravity analysis set forth in OAR 471-030-0038(4) applies.

Claimant has not shown that he faced a grave situation as a result of his impending demotion. While the demotion would have resulted in a reduction of expected base wages from \$44,000 to \$41,000 per year

and meant that claimant was ineligible to receive bonus pay, the record suggests that at least some overtime would have been available to claimant, and working even a portion of the 15 to 20 weekly overtime hours that he was accustomed to working would likely have made up some or all of the difference in overall compensation. The record does not show that having to work some or all of this overtime in different stores, if he volunteered to do so, would have been so burdensome as to constitute a grave situation. Further, though his change in status from general manager to team leader may have led claimant to feel uncomfortable with the idea of working as an equal with employees he had recently supervised, this was also not a grave situation, as it is reasonable to infer that at least some reasonable and prudent employees would continue to work for their employer if faced with such a situation. While the employer's management restructuring was understandably unwelcome news to claimant, because he has not shown that its effects on him would have been such that no reasonable and prudent person would have continued to work for their employer for an additional period of time under the circumstances, he has not met his burden of showing that he quit work with good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective December 31, 2023.

DECISION: Order No. 24-UI-256196 is affirmed.

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

DATE of Service: July 19, 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.

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