

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0586

Modified
No Disqualification

PROCEDURAL HISTORY: On July 18, 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 June 23, 2024 (decision # L0005197347).¹ Claimant filed a timely request for hearing. On August 7, 2024, ALJ Fair conducted a hearing, and on August 8, 2024, issued Order No. 24-UI-261860, modifying decision # L0005197347 by concluding that claimant was discharged, not for misconduct, within 15 days of a planned voluntary leaving without good cause, and was eligible for benefits for the week of June 23 through 29, 2024 (week 26-24) but disqualified from receiving benefits effective June 30, 2024. On August 11, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Deschutes County employed claimant as a corrections deputy from April 1 to June 27, 2024.

(2) The first six weeks of claimant's employment consisted of training and orientation. The employer expected that claimant would also obtain a necessary certification by successfully completing a training program at the state's academy, which was to begin on July 8, 2024. Between these training periods, claimant worked at the employer's jail.

(3) Following the initial training period, claimant was required to work a schedule that generally included a 6:00 p.m. to 6:00 a.m. shift twice weekly. Claimant had "great difficulty" adjusting to a work schedule that included long overnight shifts. Exhibit 1 at 1.

¹ Decision # L0005197347 stated that claimant was denied benefits from June 23, 2024, to June 21, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. *See* ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning June 23, 2024, and until she earned four times her weekly benefit amount in subject employment.

(4) Through being trained on how to avoid certain dangers found in a jail setting, including the possibilities of violent attacks and exposure to biohazards, claimant experienced anxiety and “constant fear.” Exhibit 1 at 1. After a few weeks working in the jail, claimant felt that she was not mentally or emotionally capable of handling certain situations she encountered or might encounter, including those requiring the use of deadly force.

(5) By June 27, 2024, claimant believed that she would not be capable of continuing in her job following the second portion of her training and that she therefore should not attend the academy. Claimant informed the employer of her intent to resign effective July 2, 2024, her final scheduled shift before leaving for the academy. The employer had been satisfied with her work, and several higher-ranking deputies and human resources employees discussed claimant’s concerns but could not resolve them. The employer informed claimant that whenever she submitted her resignation it would be given immediate effect per their policy. Claimant could have continued working at that point, but instead typed and submitted a resignation letter stating that it had immediate effect. Claimant did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant quit work with good cause.

Nature of the work separation. 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).

The order under review concluded that claimant was discharged on June 27, 2024, because she gave notice of her intent to resign effective July 2, 2024, but the employer refused to allow her to work the notice period. Order No. 24-UI-261860 at 3. The record does not support the conclusion that claimant was discharged. While claimant told the employer on June 27, 2024, of her intent to quit on July 2, 2024, she then learned that it was the employer’s policy not to allow employees to work notice periods. The record suggests that after learning of this policy, claimant had the option of continuing to work for the employer until she was ready to resign, at which time she could give her resignation and immediately stop working, but that she instead drafted and submitted a resignation letter stating that it had immediate effect. In essence, claimant agreed with the employer to move up the effective date of her resignation before she officially tendered it to the employer.

Where an employer and employee have agreed upon a mutually acceptable date on which employment would terminate, the termination should be treated as a voluntary leaving and not as a discharge. *Smith v. Employment Division*, 34 Or App 623, 579 P2d 310 (1978); *See also J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (where claimant notified the employer of his intent to resign on a particular date, and the employer established a different separation date, claimant’s “agreement” to the new separation date can be inferred if claimant did not voice disagreement with the new date or otherwise insist upon working until the original resignation date). Accordingly, because claimant and the employer agreed upon a mutually acceptable date on which employment would terminate, even though claimant would otherwise have been willing to work for an additional period of time, the work separation was a voluntary leaving that occurred on June 27, 2024.

Voluntary leaving. 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). “[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 resigned from work because she could not adjust to working long overnight shifts and because she suffered feelings of anxiety and “constant fear” from the dangers posed by her workplace. The record does not suggest that any specific incident triggered claimant’s anxiety and fear. Instead, the cumulative effect of being trained to handle potential threats to her life or wellbeing, and then realizing the likelihood of encountering these threats when she began her work, caused these feelings. Claimant testified that she realized she was mentally unable to perform some aspects of her job, including using deadly force when necessary, and was concerned that her continued employment would be “a liability” to her coworkers and the jail’s inmates. Audio Record at 20:52. Given the safety issues presented by an employee in such a position being mentally unable to perform essential aspects of the job, claimant faced a grave situation.

Moreover, claimant had no reasonable alternative to leaving work. Claimant testified that working in the jail was “a lot different” than what she had expected, and that the hazards unique to such a workplace were not fully known to her until she experienced working there. Audio Record at 15:58. Claimant further testified that she had gone through “a long and arduous hiring process” and was “really excited and proud” when she was offered the job that she had “wanted to do for many years.” Audio Record at 17:03. That claimant would leave such a job after just a few weeks of work, following completion of her initial training, supports claimant’s contention that the job was unexpectedly and irreconcilably misaligned with her “mental fortitude or wherewithal to tolerate” the demands and hazards of the job. Audio Record at 16:32. Additionally, as the employer had not been dissatisfied with claimant’s performance to that point, and engaged claimant in a discussion about her concerns immediately prior to her resignation, it can reasonably be inferred that they would have proposed alternatives to keep claimant in their employ, had any been available. Accordingly, claimant has shown that she had no reasonable alternative but to leave work when she did, and therefore quit work with good cause.

For these reasons, claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits as a result of the work separation.

DECISION: Order No. 24-UI-261860 is modified, as outlined above.

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

DATE of Service: August 27, 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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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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