

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0615

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 18, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective February 18, 2024, through February 15, 2025 (decision # L0004533843). Claimant filed a timely request for hearing. On July 22, 2024, ALJ Monroe conducted a hearing which was continued to July 31, 2024, and on August 8, 2024, issued Order No. 24-UI-261970, modifying decision # L0004533843 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective February 18, 2024.¹ On August 26, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant as a grocery clerk from October 11, 2020, through February 24, 2024.

(2) Based on his classification with the employer, claimant worked a minimum of twelve hours per week, and sometimes up to 30 hours per week. Claimant's work schedule and number of hours varied on a weekly basis based on the employer's business needs. For instance, the employer generally gave their employees more hours leading up to busy holiday seasons, and fewer hours after those seasons ended.

(3) The employer paid claimant \$21.85 per hour. Claimant took public transit to work, at a cost of \$5.00, round-trip, each day he worked.

(4) On Saturday, January 27, 2024, claimant was hospitalized due to an acute medical condition. On Sunday, January 28, 2024, claimant was still in the hospital. Claimant did not typically work on Sundays, but the employer had scheduled him to work that day. Because he was not aware of this fact,

¹ As the order under review explained, the dates of disqualification in decision # L0004533843 do not comport with the requirements of ORS 657.176(2)(c). Order No. 24-UI-261970 at 3.

claimant did not contact the employer, as required by the employer's policies, to let them know of his absence. During the weeks following his hospitalization, claimant sought advice and treatment on several occasions for his medical condition.

(5) On January 30, 2024, which was claimant's next scheduled day of work, the employer suspended claimant for five days because he had failed to notify the employer of his absence on January 28, 2024.

(6) After the suspension concluded, claimant noticed that the employer had scheduled him for the minimum of twelve hours per week (three four-hour shifts), which was a significant reduction compared to what he had been scheduled for prior to the suspension. Claimant believed that this reduction in hours was the result of his having failed to notify the employer of his absence on January 28, 2024. Claimant also believed that the employer "resented" claimant's need to seek medical treatment, and the accompanying limitations on his availability. July 22, 2024, Transcript at 12. Claimant did not ask the employer why they reduced his hours, however.

(7) Regarding claimant's need for accommodations while he sought medical treatment, the employer offered claimant the options of taking medical leave either through the state's Paid Leave Oregon program, or via benefits offered by a third-party insurance company contracted with the employer. However, claimant refused these options because he did not want to provide personal information, such as his social security number, to a third party. Claimant did not wish to give such information because he was concerned about data breaches that could result in the unauthorized disclosure of his information.

(8) Claimant continued to work for the employer, at the minimum of twelve hours per week, until he voluntarily quit on February 24, 2024. Claimant quit because he felt that he needed better "financial security" by way of a job that offered him more hours, and because he felt that the employer had not sufficiently accommodated his need to seek medical treatment. July 22, 2024, Transcript at 21–22.

(9) Prior to quitting, claimant did not attempt to pursue a grievance through his union, although such a remedy was available to him, because he was "sort of busy and sick," "wasn't really ready to deal with it quite yet," and believed he could resolve the matter informally. July 31, 2024, Transcript at 23. The employer allowed employees to transfer between the employer's stores, and to pick up shifts at the employer's other stores without a formal transfer. However, claimant did not pursue either of these options.

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.

Oregon administrative rule provides guidance for what constitutes good cause to leave work. 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). Per OAR 471-030-0038(5)(b)(B), leaving work without good cause includes leaving suitable work to seek other work.

Claimant voluntarily quit work due to issues stemming from a medical condition that required hospitalization and subsequent treatment, and a reduction in hours that claimant believed to be retaliation for having missed work due to his medical condition. Claimant has not met his burden to show, by a preponderance of the evidence, that any of these reasons constituted good cause for quitting.

To the extent that claimant quit work due to the reduction in hours itself, claimant did not have good cause to quit under OAR 471-030-0038(5)(e). The record shows that at the time claimant quit, he was working three four-hour shifts, for a total of twelve hours per week, and that he was paid \$21.85 per hour. This amounted to a gross pay of \$262.20 per week, while claimant’s cost of working was limited to three \$5.00 public transit trips, for a total of \$15.00 per week. Thus, claimant’s cost of working did not exceed the amount of payment he received. At hearing, claimant testified that his position with the employer was “incompatible with any other sort of job” because of the unpredictability of his schedule. July 22, 2024, Transcript at 19–20. There is dispute in the record as to whether claimant’s schedule was as unpredictable as he asserted. Even assuming claimant’s assertion to be correct, however, the record does not show that working twelve hours per week for the employer would substantially interfere with claimant finding other, full-time work. Moreover, claimant had the apparent option of picking up shifts at other stores. Claimant did not explain why he did not do so. Because the cost of working did not exceed the cost of what claimant earned, and because claimant did not show by a preponderance of the evidence that continuing to work for the employer substantially interfered with a return to full-time work, quitting work due to a reduction in hours did not constitute good cause for quitting.

To the extent that claimant quit work to seek other work, claimant did not have good cause to quit under OAR 471-030-0038(5)(b)(B). That provision of the rule specifically says that quitting for such a reason is not good cause to quit, so long as the work left was suitable. At hearing, claimant testified that he felt that he “need[ed] to make a move for [his] financial security,” suggesting that he left the job, at least in part, to look for other work that offered him more work hours. July 22, 2024, Transcript at 21–22.

ORS 657.190 states:

In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.

Thus, unless the record showed that the work claimant left was not suitable under ORS 657.190, claimant would not have good cause for leaving work to seek other work. The record does not contain evidence to show, or suggest, that the work involved risk to claimant’s health, safety or morals, that claimant was not qualified for the job, or that the job was otherwise unsuitable. Furthermore, claimant

worked for the employer for over three years, and left in part over concerns that he was not being given *enough* work. This suggests that claimant was otherwise content with the conditions of the work itself. As such, the work was, more likely than not, suitable. Therefore, to the extent that claimant quit to seek other work, he did so without good cause.

To the extent that claimant quit because he believed that the employer had reduced his hours as retaliation for having been absent without notice, or requiring accommodation of his medical needs, claimant has not met his burden to show that this was actually the reason that the employer reduced his hours. The number of hours given to employees fluctuated based on seasonal staffing needs. Additionally, claimant admitted at hearing that he did not ask the employer why they reduced his hours. As such, the record as to whether the employer reduced claimant's hours in retaliation is no more than equally balanced. Therefore, claimant has not met his burden to show that the employer reduced his hours for that reason.

Furthermore, claimant had the reasonable alternative of filing a grievance with his union against the employer. At hearing, claimant explained that he did not do so because he was "sort of busy and sick," "wasn't really ready to deal with it quite yet," and believed he could resolve the matter informally. July 31, 2024, Transcript at 23. However, claimant also testified that he wished, in retrospect, that he had "used the proper channels" through his union. July 22, 2024, Transcript at 21. Claimant's explanation does not show that he could not have pursued the reasonable alternative of filing a grievance with his union. Additionally, although claimant's frustration over his reduced hours is understandable, that situation was not so objectively intolerable as to make continuing to work and pursuing a grievance against the employer unreasonable. Therefore, because claimant did not pursue a grievance against the employer, claimant did not seek that reasonable alternative before quitting due to perceived retaliation.

Finally, the record shows that claimant quit, in part, because he felt that the employer had not been adequately accommodating his need to follow up with doctors regarding the medical condition for which he had been hospitalized. Given that claimant had also been frustrated with the small number of hours he had been given following his return from the hospitalization and suspension, it is not clear how he was unable to fit his medical appointments within his schedule. Even assuming that the employer did not adequately accommodate claimant's scheduling needs to account for his medical appointments, claimant was informed that he had the option of applying for paid medical leave through Oregon Paid Leave, or the employer's third-party-contracted program, to take time off while he sought treatment. Claimant did not do so because he was concerned about providing his personal information, such as his social security number, to the organizations administering those programs. He feared it could lead to an inadvertent disclosure of his information in a data breach.

Claimant's concern is understandable and not without merit. However, the Department—which administers the Oregon Paid Leave program as well as the unemployment insurance program—also requires claimants to provide their social security numbers to process claims for benefits. Given that claimant filed an initial claim for unemployment insurance benefits, it is not clear what distinction he draws between providing his social security number for those benefits and providing it to apply for Oregon Paid Leave benefits. Furthermore, despite claimant's concerns about providing his private information for the purpose of obtaining paid medical leave, claimant did not show that doing so would have put him at a heightened risk of a data breach beyond the risk associated with any other common situation, such as applying for a credit card or a residential lease. Thus, a reasonable and prudent person

would have concluded that providing such information would carry an acceptable amount of risk compared to the prospect of losing one's income entirely, and doing so therefore would have been a reasonable alternative to quitting. Because claimant did not seek that alternative, quitting due to his belief that the employer was not accommodating his need to seek medical treatment was not good cause for quitting.

For the above reasons, claimant voluntarily quit without good cause, and is therefore disqualified from receiving unemployment insurance benefits effective February 18, 2024.

DECISION: Order No. 24-UI-261970 is affirmed.

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

DATE of Service: September 17, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.