

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0616

Reversed
No Disqualification
No Overpayment

PROCEDURAL HISTORY: On June 6, 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 April 21, 2024, and that claimant received \$1,163 in benefits to which she was not entitled and must repay (decision # L0004395568). Claimant filed a timely request for hearing. On August 15, 2024, ALJ Nyberg conducted a hearing, and on August 23, 2024, issued Order No. 24-UI-263607, modifying decision # L0004395568 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 28, 2024, and was overpaid \$1,163 in benefits that she was only liable to have deducted from future benefits. On August 23, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her August 26, 2024, argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's August 28, 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's August 28, 2024, argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Horizon Project, Inc. employed claimant as a caregiver in Pendleton, Oregon from June 18, 2021, until April 1, 2024, at a wage of \$17.00 per hour.

(2) Claimant's minor daughter, who lived with claimant in Pendleton, suffered from a medical condition that caused her to be frequently hospitalized for specialty care in Portland, Oregon. Pendleton and

Portland are located approximately 200 miles apart.¹ In 2024, claimant made arrangements to stay with an adult daughter at times when her minor daughter was hospitalized. Claimant's adult daughter lived approximately 30 minutes away from the Portland hospital.

(3) During her employment, the employer granted claimant unpaid leave whenever needed to accompany her daughter for hospitalizations, and the employer intended to continue granting such requests. These trips posed a financial burden on claimant in terms of lost wages and travel expenses. Claimant was not aware of her potential eligibility for benefits under Paid Leave Oregon.

(4) On March 13, 2024, claimant notified the employer that she was quitting work, effective April 1, 2024, to move in with her adult daughter so that she and her other children would be close to the hospital. Claimant was seeking other work within commuting distance of the hospital but had not been offered a job at that time.

(5) On April 1, 2024, claimant quit working for the employer as expected and moved with her family to her adult daughter's home near the hospital. Claimant had received a job offer from an employer in that area after giving notice of her resignation, and officially accepted the offer three days after moving in with her daughter.

(6) On April 26, 2024, claimant filed an initial claim for benefits that the Department determined was monetarily valid with a weekly benefit amount of \$408. Claimant claimed benefits for the weeks of April 20 through May 4, 2024 (weeks 17-24 through 19-24) and was paid a total of \$1,163 in benefits for those weeks. These are the weeks at issue.

CONCLUSIONS AND REASONS: Claimant quit work with good cause. Claimant was not overpaid benefits.

Voluntary quit. 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 to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to

¹ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.” OAR 471-030-0038(5)(a).

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e) as follows:

* * *

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off[.]

* * *

Claimant quit working for the employer to move closer to the hospital in Portland where her minor daughter frequently received care, thereby alleviating the financial burden resulting from travel and lost wages. The order under review concluded that claimant quit work to accept an offer of new employment that did not amount to good cause under OAR 471-030-0038(5)(a), and because of the illness of an immediate family member that did not constitute a “compelling family reason” under OAR 471-030-0038(1)(e). Order No. 24-UI-263607 at 5. The record does not support that these were claimant’s reasons for quitting. Instead, the record shows that claimant quit work due to the ongoing financial burden posed by her daughter’s distant hospitalizations.

Claimant testified that she did not have an offer of new employment when she gave notice of her intent to resign on March 13, 2024. Transcript at 15-16. Therefore, this was not a motivation for quitting work at the time claimant advised the employer of her decision to quit and, despite receiving the job offer, her motivations remained unchanged at the time she left work. Therefore, OAR 471-030-0038(5)(a) is inapplicable to the good cause analysis because claimant did not leave work to accept an offer of other employment.

Similarly, the reason that claimant quit work did not constitute a “compelling family reason” under OAR 471-030-0038(1)(e), and that provision is not applicable to the good cause analysis. Claimant quit work because living in Pendleton was incompatible with claimant’s need to care for her daughter, not because the employer would not allow claimant leave to care for her daughter. Therefore, claimant’s need to relocate nearer to Portland is the proper subject of the standard good cause analysis under OAR 471-030-0038(4).

Claimant’s daughter required frequent hospitalization in Portland, presumably because hospitals in Pendleton and other nearby locations were not equipped to provide the care needed. The time and expense of the 400-mile round trip for each hospitalization and resulting lost wages undoubtedly caused financial and other strains on claimant and her family. Faced with such a situation, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work when a move within commuting distance of the hospital was achievable, unless there was a reasonable alternative.

Claimant had no reasonable alternative to leaving work. While additional unpaid leave was available to claimant, such leave would not have alleviated the financial burdens of travel and missing work that gave rise to the grave financial situation she faced. Although Paid Leave Oregon benefits may have been available to claimant, the record shows that claimant was not aware of these benefits. Further, the fact that the employer's witness only mentioning unpaid leave options in their testimony suggests that the employer never made claimant aware that paid leave was an option. *See* Transcript at 20-21. Therefore, the record does not show that claimant either was aware, or should have been aware, of her potential eligibility for benefits under that program. As such, claimant could not reasonably have availed herself of this alternative. Accordingly, claimant did not have a reasonable alternative to leaving work.

For these reasons, claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

Overpayment. ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

The order under review concluded that claimant was overpaid \$1,163 in benefits for the weeks at issue because she was disqualified from receiving benefits for those weeks based on her work separation from the employer and therefore not entitled to them. Order No. 24-UI-263607 at 5. The record no longer supports this conclusion because, as stated above, claimant is not disqualified from receiving benefits based on the work separation. Claimant therefore is entitled to the benefits she received for the weeks at issue. Accordingly, claimant was not overpaid benefits.

DECISION: Order No. 24-UI-263607 is set aside, as outlined above.

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

DATE of Service: September 17, 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.

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.