

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0638

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 13, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation (decision # L0004409352). The employer filed a timely request for hearing. On August 21, 2024, ALJ Triana conducted a hearing, and on August 28, 2024, issued Order No. 24-UI-264124, reversing decision # L0004409352 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 7, 2024. On September 10, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Art Signs, Inc. employed claimant as design and installations worker from July 2023 until April 9, 2024.

(2) Claimant had a broken back and neck condition and had undergone surgery to address it by fusing some of his vertebrae and cervical discs. The condition imposed physical limitations on claimant that rendered him partially disabled. As a result of the disability, claimant received Social Security Disability benefits. Claimant's Social Security Disability benefits were subject to restrictions on the amount claimant could work and earn while still receiving the benefits. The employer accommodated claimant's physical limitations and income restrictions by assigning him to work less than full time hours.

(3) Claimant wanted to eventually transition off Social Security Disability and work full time. In March 2024, claimant believed that his physical limitations were improving and he could work more hours for the employer. Claimant approached the employer's owner with an idea for how he could work more hours while satisfying Social Security Disability's income restrictions. Claimant's idea was for the employer to compensate him for the additional hours worked by purchasing a company pick-up truck that claimant could use exclusively for three years, after which time the employer would sell the truck to claimant at a favorable price. The owner rejected claimant's idea.

(4) The owner believed that claimant's purpose in approaching him with his idea was to propose some means of claimant receiving a month off from work at a later date, in order to work on his roof, without

claimant losing the income from working while he was off of work. Therefore, after rejecting claimant's truck purchase idea, the owner suggested that claimant work some extra hours then, bank the extra time, and receive compensation for it during the month he desired to take off from work. Claimant thought that the owner's proposal "would equate to Social Security fraud" and, while "rais[ing] [his] voice a bit," stated that he was not interested in the owner's proposal. Transcript at 11. The discussion then ended.

(5) The owner was "fine with" claimant rejecting his idea as the owner had offered it "totally for [claimant's] benefit." Transcript at 26. However, "from that point on [claimant] felt very resented." Transcript at 11. On one occasion after the March 2024 compensation discussion, claimant noticed that the owner had scolded claimant for failing to keep track of hours spent on a particular job, but that a few minutes later, the owner had "joked around with" and declined to scold a coworker who had similarly failed to track hours on a job. Transcript at 17. Claimant's perception that he was resented gave him "a lot of anxiety." Transcript at 11.

(6) Claimant believed that his Social Security Disability income restrictions were such that for each paycheck he received, the check had to be dated for the same month in which claimant performed the work. For example, a paycheck that reflected pay for work claimant performed in March was required to have a March date printed on it. Claimant believed that "[o]therwise[,] that's going to be considered income for the next month" and claimant could "get into a lot of trouble if that's not . . . adhered to." Transcript at 11. The employer's payroll manager, the owner's wife, knew of claimant's paycheck date preference and typically accommodated him.

(7) On claimant's paycheck for the period covering the last two weeks of March 2024, the payroll manager mistakenly dated claimant's check for April 1, 2024. On April 1, 2024, claimant picked up the check and did not initially notice the date. Claimant then cashed the check and noticed during the cashing process that it was dated April 1, 2024. On April 2, 2024, claimant raised the matter of the April 1, 2024, date on the paycheck with the owner. The owner's response was "that's just the way it is." Transcript at 12.

(8) Without asking the payroll manager, claimant assumed that she had intentionally failed to date the paycheck for March, and when he heard the owner state "that's just the way it is," claimant came to believe that the employer was "not going to work with [him] on the checks." Transcript at 20. However, the owner's statement was a reference to the fact that since claimant had already cashed the paycheck "you can't go back and change it." Transcript at 32. If claimant had brought the check back before cashing it, the employer would have re-dated it for March and would have viewed such a request as something "[t]hat wouldn't have been any big deal." Transcript at 32.

(9) Nevertheless, claimant believed that, under his Social Security Disability income restrictions, because of the paycheck dated April 1, 2024, he would only be able to work a few hours in the month of April 2024 and still receive Social Security Disability benefits. Claimant believed the employer would not work with him on dating paychecks going forward, and that he would "either get into a lot of trouble with Social Security or [would] need to quit" working for the employer. Transcript at 20. The dilemma claimant believed he faced between choosing between Social Security Disability benefits and working for the employer caused him stress.

(10) Claimant's paycheck dated April 1, 2024, and the owner's statement when claimant raised the matter "made [claimant] feel like [he] just couldn't work there anymore." Transcript at 11. On April 9, 2024, claimant quit working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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). Claimant had a broken back and neck condition, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant quit working for the employer primarily because the fact that claimant's paycheck was dated April 1, 2024, and that the owner had stated "that's just the way it is", caused claimant to "feel like [he] just couldn't work there anymore." Transcript at 11. Specifically, claimant came to believe that the employer would not work with him on dating paychecks going forward, and he would "either get into a lot of trouble with Social Security or [would] need to quit" working for the employer. Transcript at 20. Claimant did not establish that he quit work with good cause based on this reason.

The record shows that the employer's payroll manager had dated claimant's paycheck for April 1, 2024, by mistake, and that the owner's statement of "that's just the way it is" was a reference to the fact that since claimant had already cashed the paycheck, "you can't go back and change it." Transcript at 32. Claimant assumed the payroll manager had dated the paycheck April 1, 2024, intentionally and did not check with her for clarification. If claimant had brought the paycheck back before cashing it, the employer would have re-dated it for March and would have viewed such a request as something "[t]hat wouldn't have been any big deal." Transcript at 32.

Thus, claimant more likely than not did not actually have to choose between receiving Social Security Disability benefits and working for the employer, but could have continued with both. Claimant could have alleviated the stress resulting from his mistaken belief that he had to choose between Social Security Disability benefits and working for the employer by simply confirming that the date of the April 1, 2024, paycheck was a mistake and that the employer would have re-dated it if it had not already been cashed. Although claimant may have had to work fewer hours during the month of April to comply with the Social Security Disability income restrictions for that month, claimant did not show that doing so for one month would have placed him in a grave situation. For these reasons, claimant failed to show that a reasonable and prudent person with the characteristics and qualities of an individual with his broken back and neck condition would have quit work for this reason.

To the extent that claimant quit working for the employer because he felt the employer resented him or treated him differently after their March 2024 discussion in which claimant rejected the owner's

alternative compensation idea, this also did not constitute good cause for quitting, because claimant did not establish that the owner's treatment of him following the discussion presented him with a grave situation. The owner was "fine with" claimant rejecting his idea, as the owner had offered it "totally for [claimant's] benefit." Transcript at 26. While claimant may have experienced anxiety due to his perception that the owner resented him, claimant offered only one example of treatment he found objectionable: that the owner had scolded claimant for failing to keep track of hours spent on a particular job, while a few minutes later declining to scold a coworker who had similarly failed to track hours. This single instance of different treatment is not sufficient to prove that a reasonable and prudent person with the characteristics and qualities of an individual with claimant's broken back and neck condition would have quit work.

Finally, to any extent that claimant quit because the owner rejected claimant's idea to receive compensation for additional hours worked by having the employer purchase a truck, allowing claimant to use it exclusively for three years, and then sell it to claimant at a favorable price, claimant quit work without good cause. The employer was not under any obligation to implement claimant's idea, and generally was free to use any compensation scheme that was lawful and reasonable under the circumstances. The record shows it was not unreasonable to reject claimant's idea.

For these reasons, claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective April 7, 2024.

DECISION: Order No. 24-UI-264124 is affirmed.

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

DATE of Service: September 27, 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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