State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0699

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 26, 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 July 21, 2024 (decision # L0005772803).[1] Claimant filed a timely request for hearing. On September 23, 2024, ALJ Enyinnaya conducted a hearing, and on September 25, 2024, issued Order No. 24-UI-267295, affirming decision # L0005772803. On October 3, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument on October 22, 2024, consisting of a written statement and an enclosed document. Claimant also submitted additional documents for consideration, under separate cover, on the same date. On October 23, 2024, claimant submitted an additional written argument, consisting of a duplicate of the written statement she had previously submitted, duplicates of some of the documentary evidence she had submitted either prior to the hearing or with her October 22, 2024, written argument, and further additional documents that she sought to have admitted into the record. The majority of claimant's written statement, and all of the enclosed documents submitted on both dates, consisted of new evidence that was not part of the hearing record. In that written statement, claimant requested that EAB consider the new evidence she submitted as "necessary to complete the record in [her] case," explaining that she had not submitted it previously because she believed that the other evidence she had submitted "would prove [her] case just as well[.]" Claimant's October 22, 2024, Written Argument at 11. Claimant also explained that she did not understand that the documents she had submitted prior to the hearing could not be admitted because she did not serve copies of those documents on the employer. Claimant's October 22, 2024, Written Argument at 11.

[1] Decision # L0005772803 stated that claimant was denied benefits from July 21, 2024, to February 8, 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 July 21, 2024, and until she earned four times her weekly benefit amount in subject employment.

Level 3 - Restricted

OAR 471-041-0090(1)(b) (May 13, 2019) states:

> Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that:
>
> > (A) The additional evidence is relevant and material to EAB's determination, and
> >
> > (B) Factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record.

As to the request to consider the additional documents enclosed with both of claimant's written arguments, claimant's request is denied. It was within claimant's reasonable control to read the instructions on the notice of hearing which explained the requirements for submitting evidence into the hearing record. Thus, the fact that claimant's documents were not admitted into the hearing record either because she did not think them necessary to prove her case, or because she did not realize that serving those documents on the opposing party were necessary for their admission into evidence, does not show that factors or circumstances beyond her reasonable control prevented her from offering that evidence into the hearing record.

As to the additional information regarding claimant's various concerns about working conditions, as outlined in claimant's written statement, claimant's request to consider that information is also denied. As explained in more detail below, the record shows that the proximate cause of claimant's decision to quit was the employer having reduced her working hours, even if these other concerns were present at the time that claimant quit. Therefore, this additional information is not relevant and material to EAB's determination of whether claimant voluntarily quit work with good cause.

Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Abby's Legendary Pizza employed claimant as a delivery driver from March 1, 2024, through July 26, 2024.

(2) The employer paid claimant minimum wage, which was $14.25 per hour at the time claimant was hired, and $14.75 per hour as of July 1, 2024.

(3) Claimant lived approximately five miles from the employer's establishment, and drove herself to and from work each day in her personal vehicle. Claimant's vehicle got approximately 20 miles to the gallon, and gasoline in claimant's area was approximately $4 per gallon at the time that claimant worked for the employer. Thus, claimant spent approximately $2 per day on her round-trip commute to work. Claimant had no other expenses relating to commuting to work, or performing work, for the employer.

(4) During the course of her employment, claimant became concerned about several aspects of her working conditions. These concerns included the employer not having respected claimant's request for a medical exemption to their headwear requirement, claimant's feeling that she was overworked, and claimant's belief that the employer gave claimant less favorable shifts or deliveries than some of her

coworkers. Claimant attempted to address these concerns with management, but felt that they were not adequately resolved.

(5) Prior to July 2024, the employer typically scheduled claimant to work between 20 and 25 hours per week. The employer generally published employee schedules three weeks in advance.

(6) Claimant last worked for the employer on July 2, 2024. Claimant was next scheduled to work on July 5, 2024, but called out of that shift because a friend needed her to dog-sit that day. Thereafter, claimant took an approved vacation in California from July 6 through July 19, 2024, and was scheduled to return to work on July 20, 2024. As a result of claimant's scheduled vacation, as well as absences from work and other limitations that claimant had placed on her work availability, the employer reduced claimant's work hours such that she would only be working between one and three three-hour shifts each week, or a total of between three and nine hours per week. Claimant learned of this change while she was on vacation. Claimant's manager told claimant that she intended to schedule claimant for more hours once claimant lessened the restrictions on her work availability.

(7) On late July 19 or early July 20, 2024, claimant ran out of gas on her drive back to Oregon from California, and was unable to find an open gas station or obtain a tow from her location until the morning. Claimant therefore notified her manager that she would not be back in time to work her shift on the evening of July 20, 2024.

(8) Claimant was next scheduled to work on July 26, 2024. On that date, approximately an hour before she was scheduled to work, claimant was returning from another trip out of town, and saw that, due to traffic caused by accidents, her GPS projected that she would arrive considerably late for her three-hour shift that day. Upon realizing this, claimant thought, "I feel like the universe is telling me to quit this job because I need the time to look for another, better job that's going to be more stable." Transcript at 11. Thereafter, claimant sent a text message to her manager and notified the manager that she was quitting effective immediately. Claimant did not return to work for the employer.

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 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).

Claimant voluntarily quit work on July 26, 2024, while she was on her way to work, as she realized that she would be significantly late for work due to traffic, and felt it was a sign that she should quit. As a

preliminary matter, claimant raises the issue as to the proximate cause of claimant's decision to quit. In her written argument, claimant broadly suggested that she quit due to multiple factors relating to working conditions, in addition to the employer's having recently reduced her hours. *See* Claimant's Written Argument at 2. Nevertheless, it is clear from the record that the reduction in hours was the proximate cause of claimant's decision to quit at that particular point in time.

Claimant's concerns with her working conditions appear to have occurred during most, if not all, of her tenure with the employer. Given that claimant had endured these conditions for approximately four months without quitting, it is reasonable to infer that claimant would have been willing to continue enduring those conditions for an additional period of time if the employer had continued to schedule claimant for an amount of hours she deemed sufficient. Likewise, it can be reasonably inferred that none of the working conditions with which claimant took issue continued to directly affect her during the three weeks or so between her last day of work and the date on which she quit. By contrast, claimant only learned of the reduction in hours within the last few weeks prior to her decision to quit, while she was off of work. This suggests that the concern which ultimately led claimant to quit on July 26, 2024, was the reduced number of hours that she was scheduled for at that time.

This is further supported by claimant's testimony, in which she explained:

> I was just really upset because I kept getting these schedules the whole time I was on my trip that had like one had nine hours. One had six hours. One had three hours. And, you know, I haven't been really been getting treated well over there anyway. And I was… it was just like I felt kind of humiliated in the first place. And so like I was already on the fence about quitting[.]

Transcript at 11. Thus, even if claimant had felt that she had been treated poorly by the employer, her spur-of-the-moment decision to quit was the result of her feeling "really upset" due to the reduced amount of hours for which she had been scheduled. Accordingly, the analysis as to whether claimant had good cause to quit must be centered on that reason for quitting.

Because claimant quit work due to a reduction in hours, OAR 471-030-0038(5)(e) requires a determination that claimant quit without good cause unless either continuing to work substantially interfered with return to full time work or unless the cost of working exceeded the amount of remuneration received. Claimant has not met her burden to show that either element of OAR 471-030-0038(5)(e) applied to her circumstances. As to the former, while the records show that claimant wanted to work more hours than she had been scheduled for, claimant offered no evidence to show that she was unable to look for other work or obtain a full-time job while working those hours. Thus, the reduction in hours did not substantially interfere with claimant's return to full time work.

As to the latter, claimant's cost of working consisted solely of approximately $2 per day in fuel. As of July 1, 2024, claimant was earning $14.75 per hour and scheduled for three-hour shifts. Claimant therefore stood to gross $44.25 per shift, which significantly exceeded her cost of commuting to work. Therefore, the cost of working did not exceed the amount of remuneration received. As claimant did not meet either element of OAR 471-030-0038(5)(e), claimant's decision to quit due to the reduction in hours was without good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits effective July 21, 2024.

DECISION: Order No. 24-UI-267295 is affirmed.

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

DATE of Service: October 28, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، 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 دستورالعمل 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.