

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0720

Affirmed
Request for Hearing Timely Filed
Disqualification

PROCEDURAL HISTORY: On May 29, 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 January 7, 2024 (decision # L0004328070).¹ On July 6, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on July 18, 2024, issued Order No. 24-UI-259430, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 1, 2024. On August 4, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-259430 with the Employment Appeals Board (EAB). On August 13, 2024, EAB issued EAB Decision 2024-EAB-0572, reversing Order No. 24-UI-259430 and remanding the matter for further development of the record on whether claimant had filed a timely request for hearing or had good cause for filing a late request for hearing and, if so, the merits of decision # L0004328070.

On September 26, 2024, ALJ Frank conducted a hearing at which the employer failed to appear, and on September 27, 2024 issued Order No. 24-UI-267531, concluding that claimant had filed a timely request for hearing on decision # L0004328070, and modifying that decision by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective July 23, 2023.² On

¹ Decision # L0004328070 stated that claimant was disqualified from receiving benefits from January 7, 2024, to January 4, 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 January 7, 2024, and until he earned four times his weekly benefit amount in subject employment.

² Although Order No. 24-UI-267531 stated that it affirmed decision # L0004328070, it modified that decision by changing the effective date of the disqualification from January 7, 2024, to July 23, 2023. Order No. 24-UI-267531 at 4.

October 13, 2024, claimant filed an application for review of Order No. 24-UI-267531 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the part of Order No. 24-UI-267531 concluding that claimant filed a timely request for hearing on decision # L0004328070. Pursuant to ORS 657.275(2), that part of Order No. 24-UI-267531 is **adopted**.

FINDINGS OF FACT: (1) Mindlance, Inc. employed claimant as an order specialist from approximately June 13 through July 24, 2023. Claimant worked for the employer as a temporary employee, contracted to work with a company called Avantor.

(2) The position with Avantor required claimant to drive significant distances daily using his own personal vehicle. This required claimant to pay an additional amount in insurance to cover the commercial use of his vehicle and keep some of the employer's equipment in his vehicle at all times. During his interview for the position, the supervisor for Avantor told claimant that due to these requirements, claimant would be reimbursed on a per-mile basis, and would also receive a monthly stipend that was intended to cover "auto maintenance." Exhibit 1 at 9. The supervisor was unable to specify at that time how much claimant would be reimbursed per mile, or the amount of the monthly stipend. On June 13, 2023, claimant received an offer letter for the position. The letter did not mention the stipend, so claimant followed up with his contact with the employer. The employer's contact confirmed that claimant would receive the mileage reimbursement and stipend, but did not specify the amounts for either. Claimant accepted the offer and began working in the position shortly thereafter.

(3) After several weeks of working in the position with Avantor, claimant still had not received any information about the stipend. On July 18, 2023, claimant met with the Avantor supervisor to ask him about the stipend. At that time, the supervisor told claimant that he had learned that temporary employees such as claimant were not eligible for the stipend. Claimant responded by giving Avantor "notice that they would need to fix the problem" and decide whether to pay claimant the stipend. Audio Record at 20:40. Claimant also informed the supervisor that if they did not pay claimant the stipend, claimant would not be willing to continue using his personal vehicle for work.

(4) On July 24, 2023, claimant again met with the Avantor supervisor. The supervisor told claimant that if claimant was unwilling to continue using his personal vehicle for work, Avantor would no longer allow him to continue working there. Because claimant did not receive the stipend as initially agreed upon when he accepted the position, claimant was no longer willing to continue using his personal vehicle for work, and declined to continue in the position.

(5) Claimant's unwillingness to continue using his vehicle for work was primarily due to "the principle of the whole thing"—*i.e.*, his frustration with Avantor having reneged on their initial offer to pay him the stipend. Audio Record at 27:23. Claimant received no financial benefit from quitting.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

Nature of the Work Separation. If the 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 the 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).

Claimant separated from work because he became unwilling to continue driving his personal vehicle for work after he learned that he would not be receiving the vehicle-use stipend that had originally been offered to him at hire. At hearing, claimant's testimony suggested that he did not believe he had quit, explaining that the Avantor supervisor told him on July 24, 2024, "Well, if you're not going to use your car, then there's no job for you," to which claimant replied, "Okay." Audio Record at 22:05. Nevertheless, the record shows that claimant quit working for the employer.³ It can be reasonably inferred from the supervisor's statements that if claimant was willing to continue driving his personal vehicle for work without receiving a stipend, claimant would have been permitted to continue in the position. Because claimant was not so willing, and told the supervisor so, his actions showed that he was unwilling to continue working in the position under the terms that Avantor had set. Therefore, claimant was not willing to continue working for the employer for an additional period of time, and the work separation is properly characterized as a voluntary leaving.

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 quit working for the employer because he learned that as a temporary employee, he would not be receiving the vehicle-use stipend that was initially offered to him when he accepted the position. As a preliminary matter, the evidence that claimant provided regarding this offer was inconsistent. At hearing, claimant suggested that the stipend and mileage reimbursements were both offered as terms in an employment contract that he signed when he accepted the offer of work. Audio Record at 29:45. However, when the ALJ asked claimant why he had not produced a copy of that contract, claimant responded that he felt that the employer (who did not appear at the hearing) should have been responsible for producing the document. Audio record at 29:53. Claimant did not indicate that he had such a document in his possession, nor did he offer to read it into the record.

By contrast, the documentary evidence that claimant did offer into evidence consisted of a letter addressed to his contact with the employer, dated August 25, 2023, in which claimant stated:

³ In the case of individuals working for temporary agencies, employee leasing companies, or governmental programs where a state agency serves as the employer of record for individuals performing home care services, the employment relationship "shall be deemed severed at the time that a work assignment ends." OAR 471-030-0038(1)(a). The record suggests that the employer was a temporary agency or employee leasing company, and that Avantor was the employer's customer to whom claimant was assigned. Thus, claimant's employment relationship with the employer was severed when claimant stopped working for Avantor.

I received an “offer letter” for this position from Mindlance, Inc. on June 13th, 2023. In reviewing this job offer, I noticed that nothing was mentioned in the job offer about the stipend for my car use, so I contacted you by email that day[.]

Exhibit 1 at 9. Claimant made no mention of an employment contract in that letter. Because the letter was drafted much closer in time to the circumstances at issue than the hearing, over a year later, claimant’s near-contemporaneous account of the job offer is afforded more weight than his later testimony, and the facts have been found accordingly. Additionally, at hearing, claimant testified that the offered stipend was to be in the amount of \$250 per month. Audio Record at 22:25. Claimant offered no other support for this figure. Instead, the remainder of the evidence that claimant offered on this point, including the letter in Exhibit 1, indicated that claimant had never received a specific figure for the offered stipend.

The combined effect of the above is that claimant has not met his burden to show either that Avantor was contractually obliged to pay claimant a stipend, or that a specific figure for the stipend was ever offered. Thus, claimant quit work because Avantor reneged on their verbal agreement to pay claimant a stipend of an undetermined amount that was initially mentioned during the hiring process, but never set forth in a contract or other enforceable instrument. This was not a situation of such gravity that claimant had no reasonable alternative but to quit.

To be clear, claimant’s frustration with Avantor is understandable, as he agreed to work for them based on terms that Avantor unilaterally changed after claimant had already been working for them for several weeks. However, given especially that the record does not show what the stipend amount would actually have been, claimant has failed to show that Avantor’s refusal to pay the stipend amounted to a situation of such gravity that he had no reasonable alternative but to quit. Claimant did not, for instance, offer evidence to show that not receiving the stipend as expected constituted a significant financial hardship. Rather, claimant’s primary issue with not receiving the stipend appeared to be “the principle of” Avantor having failed to honor their original offer. A reasonable and prudent person in claimant’s situation, faced with the indignation of not receiving a stipend but without any other significant exacerbating factors, would not conclude that they had no reasonable alternative but to quit. Therefore, claimant’s objection in “principle” to Avantor failing to pay the stipend was not good cause for quitting.

Finally, the record shows that claimant received no financial benefit from quitting, or that he benefitted from quitting in any other way. Under *Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or App 68, 340 P3d 136 (2014), for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit from leaving work. Because claimant derived no benefit from quitting, claimant quit work without good cause.

For the above reasons, claimant quit work without good cause, and is disqualified from receiving benefits effective July 23, 2023.

DECISION: Order No. 24-UI-267531 is affirmed.

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

DATE of Service: November 5, 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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