

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0799

Affirmed
Late Request for Hearing Allowed
Disqualification

PROCEDURAL HISTORY: On June 4, 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 May 12, 2024 (decision # L0004383351). On June 24, 2024, decision # L0004383351 became final without claimant having filed a request for hearing. On July 3, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 18, 2024, issued Order No. 24-UI-259481, 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 July 31, 2024, claimant filed a timely response to the appellant questionnaire. On October 23, 2024, ALJ Scott conducted a hearing, and on October 25, 2024, issued Order No. 24-UI-270778, allowing claimant's late request for hearing and modifying decision # L0004383351 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 5, 2024.¹ On November 13, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 24-UI-270778 allowing claimant's late request for hearing. That part of Order No. 24-UI-270778 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) Maaco Auto Painting of Eugene employed claimant as a manager and estimator from mid-2023 until May 9, 2024.

(2) Claimant believed that the fumes from a chemical in the paint primer used in the employer's shop was causing him to be ill by inducing headaches and nausea. Claimant did not seek medical attention for these symptoms. Claimant experienced the symptoms at a consistent level throughout his employment.

¹ Although Order No. 24-UI-270778 stated it affirmed decision # L0004383351, it modified that decision by changing the beginning date of the disqualification from May 12, 2024 to May 5, 2024. Order No. 24-UI-270778 at 6.

Claimant complained about the fumes to the employer's owner, but did not state that they were affecting his health. The owner felt that the fumes reaching claimant's office were typical for an auto paint shop.

(3) Claimant occasionally used a respirator mask for brief periods that prevented him from inhaling the fumes. However, claimant could not use the respirator often because it interfered with his ability to communicate with others in person and on the telephone.

(4) A ductless air conditioning system in claimant's office ventilated the fumes that reached the office when the system was running. However, claimant would only run the system at a temperature so low that it made the owner and other employees uncomfortable, and use of it became a source of conflict. The owner therefore directed claimant not to use the system in that manner. The owner would have permitted claimant to operate the system for ventilation without excessively lowering the temperature.

(5) On April 26, 2024, an investigator from the Occupational Health and Safety Administration (OSHA) reviewed the employer's operations in response to a complaint by a former employee. Claimant was aware of this investigation and spoke with the investigator.

(6) On May 9, 2024, claimant worked as scheduled and had not planned on quitting work at the start of his shift. At some point during the day, claimant decided to quit work due to the ongoing issue of the primer fumes making him feel ill. Claimant left his work keys on his desk and did not either notify anyone at the employer that he was quitting or attempt to discuss the matter with the owner. The following day, claimant notified the office manager that he had quit. Claimant did not work for the employer thereafter. The owner had been satisfied with claimant's work and would have taken steps to mitigate the primer fumes reaching claimant's office had he known that claimant believed they were affecting his health.

(7) After claimant quit working, OSHA concluded their investigation and did not allege that any air quality violations had been observed.

CONCLUSIONS AND REASONS: Claimant 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.

Claimant quit work because he believed that paint primer fumes from the employer's shop were making him ill. Though claimant did not seek medical attention for his symptoms, their persistence and correlation with the odor of primer being present in claimant's office were sufficient to infer their cause. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave

work rather than experiencing headaches and nausea daily from the fumes, if there was no reasonable alternative.

However, claimant had a reasonable alternative to leaving work when he did. Claimant and the owner gave differing accounts of whether claimant had informed the owner that the fumes were making him ill, with claimant asserting that he did, and the owner asserting that he did not. Transcript at 22-23, 38. These accounts are no more than equally balanced and, as claimant bears the burden of proof, the facts have been found according to the owner's account. Therefore, the owner was aware only that claimant disliked the primer odor but did not know that claimant believed that the fumes were making him ill. Both parties agreed that claimant did not give the employer any indication that he was contemplating quitting work because of the fumes.

The owner testified regarding claimant's value to the business and that, had he been aware that claimant felt ill because of the fumes, he would have tried to negotiate a solution with claimant to prevent him from quitting. Transcript at 43-44, 51. Potential solutions the employer was willing to consider included changing the timing or location within the shop for using primer, changing the airflow between the shop and claimant's office during its use such as by opening or closing doors, and allowing claimant to use the ductless air conditioning system in his office for ventilation despite the cold temperatures. Transcript at 42-43. It can reasonably be inferred that the pending OSHA investigation into air quality in the workplace would have additionally motivated the employer to ensure proper ventilation and agree to a solution that satisfied claimant. The record fails to show that claimant telling the owner that the fumes were making him ill to the point that he was contemplating quitting work would have been futile, and therefore fails to establish that it was not a reasonable alternative to quitting when he did. Because claimant did not avail himself of this reasonable alternative, he quit work without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

DECISION: Order No. 24-UI-270778 is affirmed.

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

DATE of Service: December 19, 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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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