

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0137

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 20, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0007863241). The employer filed a timely request for hearing. On February 20, 2025, ALJ Griffith conducted a hearing, and on February 27, 2025, issued Order No. 25-UI-284435, reversing decision # L0007918513 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective January 21, 2024. On March 4, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Retail Solutions, LLC employed claimant as a merchandiser from August 31, 2022, through January 26, 2024. Claimant's work involved driving to approximately 26 stores per week using her own vehicle. The employer did not reimburse claimant for mileage.

(2) At the beginning of claimant's employment, the parties agreed that the employer would pay claimant at a rate equivalent to the minimum wage in effect in Yamhill County, Oregon for travel time between claimant's home and the first and last stores she visited in a day, if the distance between that store and claimant's home was at least 30 miles or the drive lasted at least 30 minutes.¹ On most days, claimant's route involved first and last stores between 30 and 39 miles from home and drive times between 30 and 39 minutes. Claimant was otherwise paid a wage of \$19 per hour beginning at the time of arrival at the first store and ending at the time of departure from the last store, and worked five days per week.

¹ From July 1, 2023 through June 30, 2024, this wage was \$14.20. <https://www.oregon.gov/boli/workers/Pages/minimum-wage.aspx>

(3) On January 5, 2024, the employer announced a change to their travel time payment policy such that claimant would receive payment for time spent traveling between home and the first or last store of the day only if the distance was at least 40 miles or the travel time at least 40 minutes. Claimant asked the employer if she could be exempted from the change and continue working under the terms of the previous policy. On approximately January 25, 2025, claimant learned that the employer would not make an exception for her and that the new policy would apply.

(4) On January 26, 2025, claimant notified the employer that she was resigning with immediate effect due to the change in the travel time payment policy. Claimant did not work for the employer thereafter.

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 pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market area. The median rate of pay in the individual’s labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.” OAR 471-030-0038(5)(d).

* * *

(A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.

* * *

(C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.

* * *

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).

OAR 839-020-0045(1) (January 9, 2002), “regulating minimum wage, overtime and working conditions,” provides, “Home to work in an ordinary situation: An employee who travels from home before the employee’s regular workday and returns home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment, whether the employee works at a fixed location or at different job sites. Normal travel from home to work is not work time.”

Claimant quit working for the employer on January 26, 2025, because the employer changed their policy regarding pay for travel to and from the first and last worksites of the day. The employer was not legally required to pay claimant anything for her commute to and from the first and last worksites of the day. *See* OAR 839-020-0045(1). However, since the start of claimant’s employment, the employer had paid claimant for certain trips depending on their distance or duration. By agreement of the parties, the amount of such payments was tied to the minimum wage in effect in the county where claimant lived, but were not based on “work time.” As such, the payments for time claimant spent commuting to and from the first and last worksites did not involve claimant’s rate of pay under OAR 471-030-0038(5)(d), making that provision inapplicable to the analysis. Furthermore, as claimant did not suffer a reduction in the amount of “work time” as a result of the changes to the commuting time payment policy, OAR 471-030-0038(5)(e) is likewise inapplicable to the analysis. The policy change is therefore properly considered under the standard gravity analysis.

The amended policy provided for payment when claimant commuted one-way at least 40 minutes in duration or 40 miles in distance. Therefore, the change in policy resulted in a maximum loss to claimant, compared to what she would have received under the previous policy, of \$18.46 per day, assuming the longest non-compensable commute time of 39 minutes each way.² As claimant’s rate of pay for “work time” was \$19 per hour, the reduction or elimination of this benefit equated to less than one hour’s worth of pay per workday, at most. While this was understandably an unwelcome change to claimant, the relatively minor difference in overall compensation would not cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work in favor of having no income. Accordingly, claimant did not face a grave situation as a result of the policy change, and therefore did not quit work with good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 21, 2024.

DECISION: Order No. 25-UI-284435 is affirmed.

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

DATE of Service: April 2, 2025

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

² 39 x 2 = 78 minutes total commute time per day. 78/60 minutes = 1.3 hours. 1.3 hours x \$14.20 = \$18.46.

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 الاستئناف 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

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Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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