

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0364

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 22, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed without good cause to accept suitable work (decision #90600). Claimant filed a timely request for hearing. On February 6, 2014, ALJ Micheletti conducted a hearing, and on February 14, 2014 issued Hearing Decision 14-UI-10477, affirming the Department's decision. On March 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 21, 2013, Spirit Mountain Casino (employer) offered claimant a full time position as a player services representative during the employer's graveyard shift. The position was contingent on claimant passing the employer's criminal background check. Claimant was not already employed by the employer.

(2) On October 21, 2013, claimant refused the graveyard position because she did not want to work the graveyard shift. The employer had not yet completed the criminal background check. The employer had not provided claimant with a start date because she had not yet passed the background check.

**CONCLUSIONS AND REASONS:** We disagree with the Department and the ALJ that claimant refused an offer of suitable work without good cause.

ORS 657.176(2)(e) requires a disqualification from unemployment benefits if the claimant failed without good cause to accept suitable work when offered. The employer has the burden to establish that it offered claimant work, and that she refused the offer. *Alaska Tanker Company v. Employment Department*, 185 Or App 687 (2003).

The employer's offer of work was contingent upon claimant passing a criminal background check. We have consistently held that a contingent offer of employment is not an offer of work within the meaning of ORS 657.176(2)(e). See *Cody N. Langston* (Employment Appeals Board, 12-AB-2948, December 12, 2012) (an offer of work contingent on claimant passing a drug screen and background check was not

an offer of work within the meaning of ORS 657.176(2)(e)); *Paul D. Combs* (Employment Appeals Board, 08-AB-1651, September 11, 2008) (an offer of work contingent on passing a drug screen was not an offer of work within the meaning of ORS 657.176(2)(e)); *Kim A. McCauley* (Employment Appeals Board, 06-AB-1563, October 5, 2006) (to constitute an offer of work within the meaning of ORS 657.176(2)(e), the offer must be “definite rather than contingent”). Additionally, the employer did not provide claimant a date when work was to start, a necessary element of an “offer” of work. *See* UI Benefit Manual § 450.01 (rev. 03/18/08) (“The details of the job (type of work, duties, hours and days, rate of pay, start date, etc.) are essential for a bona fide offer.”)

Because the employer did not extend claimant a definite, non-contingent offer of work, we conclude claimant may not be disqualified from the receipt of unemployment insurance benefits based on a job refusal under ORS 657.176(2)(e). Having so concluded, we need not address whether the work was suitable under ORS 657.190(1).

**DECISION:** Hearing Decision 14-UI-10477 is set aside, as outlined above.

Tony Corcoran and D. E. Larson;  
Susan Rossiter, not participating.

**DATE of Service:** March 25, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.