

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1105

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to accept an offer of suitable work without good cause (decision # 131511). Claimant filed a timely request for hearing. On June 10, 2014, ALJ Frank conducted a hearing, and on June 18, 2014 issued Hearing Decision 14-UI-19921, concluding claimant did not fail to accept an offer of suitable work without good cause. On June 24, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On April 9, 2014, Table Rock Fellowship, the employer, contacted claimant by phone and offered him a part time position as a janitor. The position was contingent on claimant passing the employer's criminal background check, which had not been conducted at that time. The employer expected claimant to begin work on April 12, or April 13, 2014.

(2) Claimant refused the position on April 9, 2014 because he had accepted an offer of full time employment with another employer that was scheduled to begin on May 5, 2014. Had claimant counteroffered to work for several weeks for Table Rock Fellowship until beginning the other job, the employer would have rejected that proposal and hired another applicant.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not refuse 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 he 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”).

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).

**DECISION:** Hearing Decision 14-UI-19921 is affirmed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** July 24, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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