

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1072

Reversed & Remanded

PROCEDURAL HISTORY: On September 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132123). Claimant filed a timely request for hearing. On October 18, 2018, ALJ Frank conducted a hearing, and on October 26, 2018, issued Order No. 18-UI-118825, affirming the Department's decision. On November 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT AND CONCLUSIONS AND REASONS: Order No. 18-UI-118825 is reversed and this matter remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). In applying this rule, if an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left. OAR 471-030-0038(5)(a).

Claimant worked for the employer, Expeditors By Lindale, Inc. (Expeditors), as a temporary employee on an on-call and as-needed basis, as a bus driver and laundry unit worker from May 19, 2018 to August 2, 2018. Claimant was paid a wage of \$14.40 per hour, and during her nine weeks of employment worked only 22 days at varying hours per week, including some weeks when she did not work at all. Claimant had been accepted into the Department's Training Unemployment Insurance (TUI) program and per her program requirements, was scheduled to begin an unpaid student teaching job on August 27, 2018. During her employment for Expeditors, claimant determined that she had worked too few hours to

meet her upcoming financial needs and on August 2, 2018, both accepted a new job as a temporary employee for the U.S. Forest Service (USFS) and resigned from Expeditors. Claimant began work for USFS on August 3, 2018. She expected to work at her new temporary job between 14 to 21 days, 12 hours per day and 72 hours per week, at an hourly wage of \$16.68. Claimant in fact worked for USFS for 21 days until August 24, 2018.

At hearing, after the ALJ inquired of the parties concerning some of the specifics of claimant's jobs, he concluded that claimant voluntarily left work without good cause, reasoning that "according to claimant's testimony, the new work [with USFS] was not reasonably 'expected to continue' as required under OAR 471-030-0038(5)(a)." Order No. 18-UI-118825 at 2. We disagree and conclude the record was not sufficiently developed to make that determination.

Although OAR 471-030-0038(5)(a) does require that for a claimant to demonstrate good cause for leaving work for other offered work, the claimant must establish that the offered work must "reasonably be expected to continue", the Department has interpreted that provision to allow a claimant who left one temporary job for another to establish good cause for doing so under certain circumstances. *See*, Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10)("A person who left a temporary job to accept another temporary job could establish good cause if the new work, albeit temporary, was expected to last longer than the temporary work left."). Here, the ALJ failed to clarify from the parties whether, and to what extent, claimant's job with Expeditors was reasonably expected to continue sufficient to compare it with her new job at USFS. On remand, the ALJ should inquire sufficiently of each party to determine what claimant's work schedule with Expeditors looked like prior to August 2, 2018, what her prospects for future work after that date were, both in terms of the number of shifts and dates of shifts scheduled, whether there were some weeks she was not expected to work at all and when her on-call, as-needed temporary job with Expeditors was expected to end. The ALJ should inquire concerning the conversations the parties had at hire concerning the length of the employment, such as whether the job was expected to be seasonal or permanent or end on a certain date, and the conversation the parties had when claimant resigned on August 2, 2018.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant quit with or without good cause, Order No. 18-UI-118825 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 18-UI-118825 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and S. Alba;
D. P. Hettle, not participating.

DATE of Service: December 13, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-118825 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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 desisyong ito.

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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

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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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