

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1115

Reversed
Disqualification

PROCEDURAL HISTORY: On October 5, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161653). Claimant filed a timely request for hearing. On November 14, 2018, ALJ Janzen conducted a hearing, and on November 15, 2018, issued Order No. 18-UI-119789, concluding the employer discharged claimant, but not for misconduct. On December 3, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) The Department of Administrative Services (DAS) employed claimant from July 7, 2014 to August 10, 2018 as an energy analyst, which was a permanent position (not limited duration).

(2) On July 31, 2018, the Oregon Department of Fish and Wildlife (ODFW) sent claimant a letter stating, "Congratulations. This letter is to confirm your appointment for a limited duration . . . Operations and Policy Analyst III position. . . I am pleased to welcome you as the real property manager with [ODFW]." Transcript at 5. The letter also stated, "This preliminary appointment remains contingent upon your fingerprints passing the national background check consistent with ODFW [human resources] policy." Transcript at 15. ODFW required claimant to complete the fingerprint process for the criminal history check within ten days of hire. The position was a new, limited duration position for two years that would pay more than claimant earned from DAS. The letter stated that ODFW did not guarantee continued employment beyond the limited duration period. Transcript at 69. On August 1, 2018, claimant signed the letter to accept the ODFW position and returned it to ODFW.

(3) Later on August 1, 2018, claimant asked the employer's administrative staff what he should do because he "got a new job." Transcript at 6. The employer's administrative staff told claimant to submit a letter of resignation so that the employer could begin the process of transferring claimant's benefits to ODFW. Claimant sent the employer an email stating, "I have accepted a position . . . at [ODFW]. My

first day at ODFW is scheduled for Monday Aug. 13th, so my last day at DAS will be Friday the 10th. This letter serves as my resignation.” Exhibit 1 at 2. A member of management accepted claimant’s resignation on August 1 and sent claimant an email stating, “[A]nyone who wishes to rescind their resignation must meet with an appointing authority because we have accepted the resignation.” Transcript at 21.

(4) Although claimant expected to pass the background check for ODFW because he had previously passed the background check for DAS, had a high security gaming license from the Grand Ronde Gaming Commission, and did not have a criminal background, he did not begin the background check process with ODFW before he gave DAS his notice of resignation.

(5) On August 10, 2018, ODFW rescinded its job offer to claimant and told claimant not to report to work with ODFW on August 13, 2018.

(6) After ODFW contacted him on August 10, 2018, claimant sent an email to his supervisor stating that he would not be leaving DAS to take a new position and asking the employer to “rescind my previous resignation letter.” Exhibit 1 at 5. After he sent the email, claimant’s supervisor told claimant to arrange an appointment with human resources to “ask for your job back.” Transcript at 11. Claimant made an appointment for Monday, August 13, 2018 with human resources to discuss “getting [his] job back,” and contacted his union. Transcript at 12. At the end of claimant’s shift on August 10, 2018, in accordance with claimant’s notice of resignation, his employment ended.

(7) On August 13, 2018, claimant and his union representative met with a human resources “appointment authority” to explain claimant’s reasons for requesting to rescind his resignation and be rehired or reinstated by the employer. The employer was dissatisfied with claimant’s conduct during the meeting because he stated that he did not resign his job at DAS, called working for DAS a “nightmare,” raised his voice when he spoke during the meeting, and called human resources staff “incompetent,” and his supervisor a “liar.” Transcript at 26, 51. Because it was dissatisfied with claimant’s conduct during the August 13 meeting, the appointment authority told claimant that the employer would not allow him to rescind his resignation.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left work without good cause.

Nature of the work separation. The first issue this case presents is the nature of the work separation. The standard for determining how to characterize the nature of the work separation is set out at OAR 471-030-0038(2) (January 11, 2018). If claimant could have continued to work for the same employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) If claimant was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b). For purposes of determining if a work separation occurred, the term “work” means the continuing relationship between an employer and an employee.

Although the ALJ found as fact that claimant submitted a letter of resignation on August 1, 2018, the ALJ concluded that the employer discharged claimant on August 10 because claimant’s request to rescind his resignation showed he was willing to continue working for the employer *on August 10*, and

the employer did not have continuing work available for claimant after August 10.¹ We disagree that claimant's willingness to continue working for DAS after he spoke with ODFW on August 10 is dispositive of the nature of the work separation.

Although claimant asserted at hearing that he did not quit (Transcript at 46), it is undisputed that claimant sent an unambiguous email to the employer stating that the email "serv[ed] as his resignation" effective August 10 because he had accepted another job. The resignation contained no conditions and DAS accepted claimant's resignation on August 1, to be effective August 10. Although claimant attempted to rescind his resignation on August 10, an employer is not required to accept an attempted rescission of a resignation. Having accepted claimant's initial notice of resignation, an employer may reject claimant's later attempt to rescind it, and hold claimant to the terms of the initial notice of voluntary leaving. *Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999). The legal significance of claimant's voluntary resignation was not altered by ODFW's actions on August 10 or the employer's refusal to allow him to rescind his resignation. The work separation on August 10, prompted by claimant with his August 1 notice of resignation, was a voluntary leaving. The fact that the employer opted not to allow claimant to rescind his resignation on August 10 or to rehire claimant on August 13 did not change the nature of the work separation.

Quit without good cause. Having concluded that the work separation was a discharge, the ALJ did not assess if claimant voluntarily left work with or without good cause. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). If an individual leaves work to accept an offer of other work, good cause exists to leave the individual's existing employment only if the offer of new work is, among other things, "definite" at the time of leaving and must reasonably be expected to continue. OAR 471-030-0038(5)(a). The standard for showing good cause is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

The job that ODFW offered to claimant was contingent upon claimant passing a national background check. Although claimant was confident he would pass the background check because he had no criminal background, at the time he submitted his resignation on August 1, 2018, he had not yet provided his fingerprints and fulfilled that condition to securing the job with ODFW. According to the Department's Unemployment Insurance Benefits Manual, a job offer is "definite" within the meaning of OAR 471-030-0038(5)(a) only if it is "not contingent on anything" at the time claimant decided to leave work. Unemployment Insurance Benefits Manual (April 2, 2010) at Ch. 400, §442B. Because the new work offered to claimant was explicitly contingent on passing a background check and claimant did not know the outcome of that check either at the time he notified the employer that he was resigning or by the time his resignation became effective, claimant did not have good cause to quit when he did. In addition, because the job was a limited duration position and not a permanent position, it was not reasonably expected to continue. Because the offer of new work was not "definite" and reasonably

¹ Order No. 18-UI-119789 at 3.

expected to continue, claimant failed to show that he quit work with good cause under OAR 471-030-0038(5)(a).

In sum, claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Order No. 18-UI-119789 is set aside, as outlined above.

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

DATE of Service: December 28, 2018

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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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