

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1131

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74317). Claimant filed a timely request for hearing. On August 20, 2018, ALJ Scott conducted a hearing, at which the employer failed to appear, and on August 22, 2018 issued Order 18-UI-115344, concluding claimant voluntarily left work with good cause. On September 11, 2018, the Department filed an application for review with the Employment Appeals Board (EAB).

On October 18, 2018, EAB issued Employment Appeals Board Decision 2018-EAB-0887, reversing Order No. 18-UI-115344 and remanding the case to the Office of Administrative Hearings for additional evidence. On November 20, 2018, ALJ Scott conducted the remand hearing and issued Order No. 18-UI-120071, concluding claimant voluntarily left work without good cause. On December 6, 2018, claimant filed an application for review of Order No. 18-UI-120071 with the EAB.

With his application for review of Order No. 18-UI-120071, claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) J.C. Penney employed claimant for a single day on April 27, 2018.

(2) Prior to April 27, 2018, claimant believed he had accepted an offer of employment from the employer as an appliance salesperson and would be compensated at a wage of approximately \$14.00 per hour plus commission. Claimant completed a Department of Homeland Security (DHS) I-9 form and other employment paperwork for the employer and was scheduled to attend an orientation session on April 27, 2018 with other new hires.

(3) On April 27, 2018, claimant attended the orientation session after which he was handed a work schedule which showed he had been assigned to work as a salesperson in 4 departments not including

the appliance department and had been scheduled for only part-time work at a lower wage without any commission incentive. Claimant considered his work schedule and after few minutes notified the store manager that he would not accept the position assigned and would not be returning to the employer. Claimant confirmed his decision with the employer's Human Resources Department the next morning.

(4) Approximately two weeks later, the employer sent claimant a check for \$99 based on 6.6 hours of work on April 27, 2018 in attending the orientation session. Claimant eventually cashed the check.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

An individual is disqualified from receipt of unemployment insurance benefits if the individual has a disqualifying separation from "work" under ORS 657.176(2). "Work" is defined as the continuing relationship between an employer and employee. OAR 471-030-0038(1)(a) (January 11, 2018). "Employment" means service for an employer performed for remuneration, i.e. wages. ORS 657.030(1).

Claimant asserted that because he performed no "work" for the employer in his assigned part-time sales position, he was never employed. Audio Record (December 11, 2018 hearing) ~ 25:00 to 26:30. However, claimant admitted that he had completed a DHS I-9 form for the employer prior to his orientation session. Audio Record (September 12, 2018 hearing) ~ 18:15 to 19:20. The I-9 "Employment Eligibility Verification" form is, by law, required to be completed "no later than the first day of employment, but not before accepting a job."¹ Therefore, in order for claimant to have submitted such a document to JC Penney, he must have already accepted the job even if he had not yet begun working. Thereafter, claimant also attended an orientation session for which he was paid wages. Accordingly, some manner of employment relationship had to exist between claimant and JC Penney through the time that claimant completed his orientation session on April 27, 2018 for which he later was paid remuneration in the amount of \$99. The Department's wage records are consistent with those facts.² Consequently, a "work" separation in the form of a voluntary leaving occurred when he notified the store manager on April 27 that he would not accept the offered position and would not be returning to the employer.³

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

¹ See <https://www.uscis.gov/sites/default/files/files/form/i-9.pdf>.

² Claimant seeks benefits based on wages paid by his base-year employers, of which JC Penney is one.

³ A voluntary leaving occurs if the employee could have continued to work for the same employer for an additional period of time; a discharge occurs if the employee is willing to continue to work but is not allowed to do so by the employer. OAR 471-030-0038(2).

Claimant left work because he believed he had accepted a full-time position as an appliance salesperson at a certain wage plus commission but instead was assigned a part-time position at a lesser wage without any commission incentive. However, although the assigned job may have lacked full time hours and paid a lesser wage, it offered an opportunity for claimant to be gainfully employed while perhaps seeking a better paying job with the employer or elsewhere. When asked by the ALJ why he didn't just accept the job assigned and pursue that course of action, claimant responded, "I don't know if I really have anything to say on that" before suggesting that working for the employer for 20 hours per week would have taken away time from efforts to find a better paying job. Audio Record (December 11, 2018 hearing) ~ 20:30 to 22:30. Under the circumstances, claimant failed to establish that his reluctance about accepting a part-time job constituted a reason of such gravity that no reasonable and prudent beginning salesperson for a new employer would have at least attempted the part-time sales position assigned and continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Order No. 18-UI-120071 is affirmed.

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

DATE of Service: January 4, 2019

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

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.

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