

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1189

Reversed
Disqualification

PROCEDURAL HISTORY: On October 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103241). Claimant filed a timely request for hearing. On December 5, 2018, ALJ Snyder conducted a hearing, and on December 7, 2018, issued Order No. 18-UI-120961, concluding claimant voluntarily left work with good cause. On December 27, 2018, the Department filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the Department's written argument in reaching this decision.

FINDINGS OF FACT: (1) Dick Hannah Nissan employed claimant from May 1, 2018 until May 25, 2018 as a sales associate at its car dealership.

(2) The employer paid claimant \$11.25 per hour for 40 hours per week, or the commission from his sales, whichever amount was higher.

(3) On May 14, 2018, claimant interviewed with another car dealership for a sales associate position. Before May 21, 2018, claimant completed and passed a background check and drug screening with the other car dealership.

(4) On May 21, 2018, the other car dealership offered claimant a permanent position as a sales associate. The other car dealership offered to pay claimant \$11.25 per hour for 40 hours per week, or the commission from his sales, whichever amount was higher. A manager from the other car dealership told claimant he could begin work immediately. Claimant and the other car dealership agreed claimant would begin work on May 28, 2018.

(5) On Friday, May 25, 2018, claimant voluntarily left work with the employer to accept work with the other car dealership.

(6) On Monday, May 28, 2018, claimant began work with the other car dealership.

(7) Claimant's weekly unemployment insurance benefit amount was \$604.¹

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left work 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

OAR 471-030-0038(5)(a) further provides that, if an individual leaves work to accept an offer of other work, good cause exists if the offer was definite, the work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the offered work was reasonably expected to continue, and the work paid an amount equal to or in excess of the weekly benefit amount, or an amount *greater than* the work left. (Italics added).

In Order No. 18-UI-120961, the ALJ concluded that claimant had good cause to leave work with the employer because the offer of work was definite, was to begin within a reasonably short time, was for a permanent position, and "was to pay an amount equal to the amount paid by the Employer."² We disagree that claimant met the condition regarding pay necessary to establish he had good cause to leave work to accept an offer of other work.

OAR 471-030-0038(5)(a) provides that the offered work must pay an amount equal to or in excess of the weekly benefit amount, or an amount *greater than* the work left. The offered work from the other car dealership paid \$11.25 per hour for 40 hours per week, and therefore did not pay more than claimant's weekly benefit amount of \$604 ($\$11.25 \times 40 = \450). Nor does the record show that the offered work promised to pay claimant more than the work he left. The other car dealership promised to pay claimant the greater of \$11.25 per hour for 40 hours per week, or the commissions he earned. Claimant testified that although the pay plan at the other car dealership was "very similar" to Dick Hannah Nissan's pay plan, he had a higher earning potential at the other dealership because it sold more cars and paid more per car to its sales associates.³ Claimant based his understanding of the sales potential at the offered job

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to EAB in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² Order No. 18-UI-120961 at 2.

³ Audio Record at 14:18 to 14:36.

on “what [he] had seen and what [the dealership] had said.”⁴ However, claimant’s speculative belief of his earning potential based on “what [he] had seen and what [the dealership] had said”⁵ was not, on this record, a guarantee or promise from the new employer. The record does not therefore show by a preponderance of the evidence that claimant met the pay component of OAR 471-030-0038(5)(a), requiring that the offered work pay an amount equal to or more than the weekly benefit amount, or an amount greater than the work left. Consequently, claimant did not have good cause to voluntarily leave work to accept an offer of other work.

Claimant did not establish he quit work with good cause. He is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-120961 is set aside, as outlined above.

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

DATE of Service: January 29, 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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⁴ Audio Record at 15:16 to 15:22.

⁵ Audio Record at 15:16 to 15:22.



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 desisyon.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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