

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0152-R**

*Reversed on Reconsideration*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142031). Claimant filed a timely request for hearing. On January 22, 2019, ALJ R. Frank conducted a hearing, and on January 24, 2019 issued Order No. 19-UI-123345, affirming the Department's decision. On February 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On March 18, 2019, EAB issued Appeals Board Decision 2019-EAB-0152, affirming Order No. 19-UI-123344.

ORS 657.290(3) authorizes EAB, upon its own motion, to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." On March 20, 2019, EAB decided pursuant to its authority under ORS 657.290(3) to reconsider EAB Decision No. 2019-EAB-0152.

On reconsideration, EAB again considered claimant's written argument.

**FINDINGS OF FACT:** On reconsideration, EAB adheres to the findings of fact set forth in EAB Decision 2019-EAB-0152, set forth below:

(1) Great Notion Brewing Company employed claimant from July 14, 2018 to August 17, 2018. Claimant generally worked fewer than 20 hours per week for the employer at a rate of \$15.00 per hour or less.

(2) In early August 2018, St. Stephen's Academy offered claimant work as Director of Development. The position was new to St. Stephen's Academy, but would be permanent, full-time employment, and would pay more than claimant earned working for the

employer.<sup>1</sup> St. Stephen's requested that claimant take an intense training course in fundraising, scheduled to begin August 20, 2018.

(3) Claimant expressed interest in accepting employment, and agreed to take the class. On August 13, 2018, St. Stephen's sent an employment offer to claimant to "start the compensation conversation." See Written Argument. The email accompanying the offer stated, "Nothing is set in stone yet." *Id.*

(4) Effective August 17, 2018, claimant quit his job with the employer to complete unpaid training for his new position and, thereafter, begin his new job. At the time claimant quit his job with the employer, he and St. Stephen's had not yet agreed upon the terms of claimant's compensation or other employment terms. However, St. Stephen's had paid \$1,595.00 in tuition for claimant to attend the fundraising class.

(5) On September 1, 2018, claimant began work with St. Stephen's.

Additionally, EAB finds the following facts:

(6) St. Stephen's August 13, 2018 offer to claimant included the following terms:

**Compensation:** \$50,000 base salary for 2018-19 CY plus a percent commission on funds brought into SSA during CY according to the following formula:  
<\$99,999 = -%  
\$100,000-\$249,999 – 5%  
> \$250,00 = 10%

The August 13, 2018 offer also listed benefits to include a tuition benefit of \$13,770 per child, \$6,000 per year health insurance reimbursement, short and long term disability coverage, group life coverage, and a retirement account contribution. The offer also specified that claimant would receive twenty-eight vacation, personal, and sick days in addition to school breaks and federal and school holidays.<sup>2</sup>

**CONCLUSIONS AND REASONS:** On reconsideration, we conclude that claimant voluntarily left work with good cause.

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<sup>1</sup> Although claimant and St. Stephen's had not agreed on claimant's compensation package at the time he quit work, it is more likely than not that whatever the amount of the compensation package, the job would pay more than what claimant earned working for the employer.

<sup>2</sup> The information in Finding of Fact 6 is necessary to complete the record, and therefore admitted into evidence as EAB Exhibit 1. A copy of EAB Exhibit 1 has been included with the copies of this decision mailed to the parties. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090. Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

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). OAR 471-030-0038(5)(a) provides:

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:

- (A) An amount equal to or in excess of the weekly benefit amount; or
- (B) An amount greater than the work left.

On reconsideration, as in EAB Decision 2019-EAB-0152, there is no dispute that claimant left work for other work that paid more than the work he left and was reasonably expected to continue. The record shows that it is more likely than not that the work was to begin within the shortest length of time reasonable under the circumstances, which included St. Stephen's desire that claimant take a fundraising class beginning August 20<sup>th</sup>, only three days after claimant quit his job with the employer. The only remaining matter in dispute is whether the offer of work was definite.

There are some indicators that St. Stephen's offer of work to claimant was definite at the time claimant quit his job with the employer. Some conditions of employment were established prior to claimant quitting his job with the employer, including that it was full time, permanent work, and the nature of claimant's duties. Also notable is that St. Stephen's invested \$1,595.00 in claimant's fundraising class tuition, which, as a matter of common sense, is not something most prospective employers are likely to do until after a job offer was extended and accepted. However, there are other indicators that St. Stephen's offer to claimant was not definite. For example, claimant and St. Stephen's had not yet agreed on a compensation package, nor had they entered into an employment agreement or contract of hire.

To resolve the question of whether claimant's offer of work was "definite," we turn to the Department's policy and interpretation of a definite offer. The Department's benefit manual states, in pertinent part:

A job offer is definite if a job exists and someone with authority to hire has extended an offer of work to the individual. Subjects usually covered by a job offer include a description of the job duties, conditions of hire (rate of pay, hours/days of the work, required equipment such as tools/uniforms/license, etc.), and the expected start date. Offers of work are not definite if they are contingent upon anything. This can include a contingency on passing a drug test, background check, credit check and/or an employer receiving a contract. A job offer is not definite when a friend/relative who may work for the employer suggests the person "come on down; I can get you on."

Prior to leaving to accept other work, the person should have made sufficient arrangements so work would start within a reasonable period of time following the separation from regular employment. In other words, the person must have some definite work to go to and must not have left the old job too soon. The amount of time claimant

takes between the old and new work should be out of necessity (not for leisure) and should be for a reasonable period of time only.

See Oregon Employment Department, *UI Benefit Manual* (§442(B) April 1, 2010).

In EAB Decision 2019-EAB-0152, we concluded that although “it appears that while St. Stephen’s had extended claimant an offer of work at the time he quit his job with the employer, and that claimant and St. Stephen’s had taken significant steps toward entering an employment relationship, key components of a “definite” offer, as that term is defined by the Department, including specific conditions of hire, the start date, a mutual agreement as to the conditions of employment were missing. We therefore concluded that the offer was not sufficiently “definite” at the time claimant quit his job with the employer on August 17<sup>th</sup>.”

On reconsideration, however, we find that our former conclusion is not supported by substantial evidence and reason. First, the standard of proof in a voluntary leaving case is preponderance of the evidence. That means that claimant must prove only that it is “more likely than not” that the offer of work was definite. Claimant need not prove any element of good cause to a higher standard. Therefore, the fact that there are some factors suggesting that the offer was not definite is not dispositive, providing that those factors are outweighed by an iota by factors suggesting the offer was definite.

Second, the indicia of definiteness listed in the UI Benefit Manual, quoted above, do not appear to be intended as an exclusive or exhaustive list of factors that must be present to establish that an offer was definite. Rather, the list suggests elements that “usually” are covered by a job offer.

Turning now to the facts of this case, St. Stephen’s had extended claimant an offer of work at the time he quit his job with the employer that included definite terms such as his salary, commission scale, benefits, and leave accrual rates. St. Stephen’s had invested \$1,595.00 for claimant to take a fundraising class. St. Stephen’s offer was not contingent upon claimant passing background or drug tests, or upon passing the fundraising class or completing any other pre-employment requirements. We also note that the circumstances associated with claimant’s job offer were drastically different from the scenario described in the UI Benefit Manual as an example of an offer that was not definite. Weighing the offer in evidence, and the substantial steps claimant and St. Stephen’s had taken prior to claimant leaving work to solidify the burgeoning employment relationship, we conclude that the factors suggesting the existence of a definite offer outweigh the factors suggesting it was not.

Considering the totality of the evidence in this case, and applying the preponderance of the evidence standard of proof, we conclude on reconsideration that St. Stephen’s offer of employment to claimant was more likely than not a definite offer of work. Because claimant left his job with the employer for a definite offer of other work that paid more than the work he left, was reasonably expected to continue, and which began in the shortest period reasonable under the circumstances, it is more likely than not that claimant voluntarily left work with good cause. He is therefore not subject to disqualification from unemployment insurance benefits because of his work separation.

**DECISION:** On reconsideration, Order No. 19-UI-123345 is set aside, as outlined above.

J. S. Cromwell, D. P. Hettle, and S. Alba.

**DATE of Service:** March 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](http://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 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، می‌توانید 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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