

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0166

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142352). Claimant filed a timely request for hearing. On January 24, 2019, ALJ Ballinger conducted a hearing, and on January 25, 2019 issued Order No. 19-UI-123374, affirming the Department's decision. On February 14, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JD Hattenhauer Dist. employed claimant from 2015 to September 23, 2018. Toward the end of his employment, claimant typically worked 16 hours per week and earned \$10.50 per hour.

(2) Prior to September 23, 2018, claimant applied for a job at Walmart. Walmart's personnel department extended claimant an offer of full time employment that paid \$11.25 per hour and was conditional upon claimant passing a drug test and a criminal background check. Claimant and Walmart agreed upon claimant's work schedule.

(3) Claimant passed the drug test. Walmart scheduled claimant to begin a three-day paid orientation, after which the employer planned to schedule claimant to work shifts.¹ Claimant knew based upon his prior employment with Walmart that being scheduled for orientation meant that he had the job.

(4) Walmart had not yet received the results of claimant's background check and did not make claimant's participation in paid orientation conditional upon claimant passing it. Continuing work for claimant was conditional upon passing the background check, but claimant was confident that he would

¹ The record does not state that claimant's orientation with the employer was going to be paid. However, Oregon law does not recognize unpaid on-the-job training time; all hours worked, including training and orientation time, must be paid time. *See e.g.* https://www.oregon.gov/boli/TA/pages/t_faq_tamgt.aspx; <https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/HoursWorked.aspx>.

pass it because he had worked for Walmart before, passed a background check there before, and was not aware of anything in his criminal history that would bar him from re-employment with Walmart.²

(5) Claimant did not quit his job with the employer until September 23, 2018, after Walmart told him to start orientation, and he worked out a notice period with the employer before leaving.

(6) Claimant reported to work at Walmart for his first day of orientation and was told that he had not passed the background check, the offer of employment was rescinded, and he would not be permitted to attend orientation.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work with 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). 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.

The ALJ concluded that claimant quit work without good cause, concluding that Walmart's offer of employment to claimant was conditional upon passing both a drug test and criminal background check, and therefore was not a "definite" offer within the meaning of the referenced rule. *See* Order No. 19-UI-123374 at 2. We disagree.

There is no dispute that Walmart's offer to claimant was for work that paid more than the work he left and was to begin within the shortest length of time reasonable under the circumstances. The next remaining issue is whether the offer was "definite." An offer of work is considered "definite" if, for example, someone with authority to hire has extended an offer of work to an individual, covered subjects included a description of the job duties, hours/days of work, rate of pay, required equipment, and the expected start date; offers of work are not definite if they are contingent upon anything. *See* Oregon Employment Department, *UI Benefit Manual* (§442(B) April 1, 2010).

It appears that most factors suggesting a definite offer of work were present in this case. Claimant knew his hours/days, rate of pay, and job duties, and he was scheduled to begin work by attending orientation. The remaining question is whether the offer of work was contingent upon anything. Walmart's initial

² Claimant had some driving offenses and a suspended license but did not think those should affect his employment and did not consider them the sort of offenses that should go on a criminal background check form.

offer to claimant was contingent upon passing a drug test. At the time claimant quit work with the employer, he had passed it, and satisfied that contingency. The initial offer to claimant was also contingent upon passing a background check. However, Walmart scheduled claimant to begin work by attending paid orientation without satisfying that contingency, suggesting that it was not actually a pre-employment contingency claimant had to satisfy before beginning work. Because Walmart brought claimant to the workplace to perform paid services before he completed a pre-employment criminal background check, it appears more likely than not that the offer of employment was not contingent upon that background check. It is therefore more likely than not that, at the time claimant quit his job with the employer, he had satisfied the only actual pre-employment contingency by passing his drug test. Because beginning work was not contingent on anything else, we conclude that the offer of employment was sufficiently definite.

Although the criminal background check was not a pre-employment contingency affecting the definiteness of Walmart's employment offer to claimant, it was a contingency that affected whether or not Walmart's offered work was reasonably expected to continue, since failing the background check was grounds to rescind or end claimant's employment. We conclude that under the circumstances involved in this particular case that the offered work was reasonably expected to continue notwithstanding the contingency. At the time claimant accepted Walmart's offer, claimant had worked for Walmart before, passed a criminal background check there before, and was not aware of anything in his recent history that would bar his re-employment with Walmart. Nor was it intuitive that claimant's driving offenses or suspended license would bar his re-employment with Walmart under the circumstances. The work was for permanent employment and a set schedule of work without additional contingencies or planned end dates. Considering the totality of the circumstances, we conclude that Walmart's offer was for work that was reasonably expected to continue.

Claimant voluntarily left work with good cause to accept a definite offer of other employment that was reasonably expected to continue and paid more than the work left. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 19-UI-123374 is set aside, as outlined above.

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

DATE of Service: March 18, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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 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

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 الإستئناف 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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