

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0608

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 100814). Claimant filed a timely request for hearing. On May 13, 2019, ALJ Murdock conducted a hearing, and on May 21, 2019 issued Order No. 19-UI-130287, affirming the Department's decision. On June 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with her application for review. However, claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Beaverton Liquor employed claimant as a sales clerk from October 24, 2018 to February 14, 2019. Claimant worked for the employer on weekdays, up to 4 hours per day, 20 hours per week. The employer paid claimant \$12.50 per hour.

(2) Beginning in January 2019, an employee twice yelled at claimant and belittled her in front of other employees, and another employee did the same on one occasion. Claimant complained to the store manager about the first employee's behavior but the employee was not disciplined.

(3) On Thursday, February 14, 2019, a third employee embarrassed claimant by telling her in front of a customer and another employee that none of the employees liked claimant, and that it would hurt claimant's feelings if claimant knew what they thought about her. The other employee laughed and walked away, further embarrassing claimant.

(4) Later that day, claimant received an offer of work from an eye care center. The offer was for permanent, full time work that paid \$15 per hour, which was to begin on Monday, February 18, 2019. Claimant accepted the offer and quit work for that reason.

(5) Claimant notified the employer that she was quitting work, effective February 14, 2018, because of how other employees had treated her. However, she would not have quit work if she had not received and accepted the eye care center's offer.

CONCLUSIONS AND REASONS: Claimant quit working for the employer with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Where, as here, 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. OAR 471-030-0038(5)(a) (December 23, 2018). Furthermore, the offered work must reasonably be expected to continue, and must pay an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left. *Id.*

Order No. 19-UI-130287 determined that claimant quit working for the employer on Thursday, February 14, 2019 to accept a definite offer of other work that was reasonably expected to continue and paid an amount greater the work left.¹ However, the order concluded that claimant quit work without good cause, reasoning that the work “did not start in the shortest time that it reasonably could” because claimant “could have finished her scheduled week with the employer before starting the new job the following week.”²

The record supports a determination that that claimant quit working for the employer to accept a definite offer of other work that was reasonably expected to continue and paid an amount greater the work left, because the offer was for permanent, full time work that paid \$2.50 more per hour, which was to begin on Monday, February 18, 2019. However, the record also supports a determination that the work was to begin the shortest length of time reasonable under the circumstances. The work was to begin on only the second business day after claimant received and accepted the offer, and notified the employer that she was quitting. Claimant's “scheduled week with the employer” consisted of only one more shift of four hours or less on Friday, February 15, 2019. Under the circumstances, claimant's decision to forgo that shift was reasonable, especially given how other employees had treated claimant, and the embarrassment she had experienced at work on February 14th.

Claimant therefore quit work with good cause under OAR 471-030-0038(5)(a). She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 19-UI-130287 is set aside, as outlined above.³

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

¹ Order No. 19-UI-130287 at 2.

² *Id.*

³ This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

DATE of Service: July 9, 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 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 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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