

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0725

Reversed & Remanded

PROCEDURAL HISTORY: On May 31, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120925). Claimant filed a timely request for hearing. On July 10, 2019, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on July 18, 2019, issued Order No. 19-UI-133556, affirming the Department's decision. On August 5, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) David Strain Excavating & Trucking Inc. (Strain) employed claimant from October 2002 until April 26, 2019 as an equipment operator and truck driver.

(2) Claimant consistently worked an average of 50 hours per week for Strain and earned \$21.00 per hour for his regular wage.

(3) Strain did not provide claimant with health insurance or retirement benefits, and claimant sought other work that would provide those benefits and a higher wage. Exhibit 1.

(4) In December 2018, claimant joined the IBEW Local 125 as an equipment operator. Exhibit 1. Before April 17, 2019, the union had claimant speak to Wasatch Electric about his credentials for a potential dispatch, including that he had one crane certification, to run a non-swing cab crane. The Wasatch Electric representative told claimant Wasatch Electric would have a crane claimant could operate. On April 17, 2019, claimant received a dispatch from IBEW 125 Local to Wasatch Electric as a crane operator to begin on April 29, 2019 at a base rate wage of \$56.72 per hour. The dispatch stated the hours would be 60 hours per week, to last for "two to three months." Audio Record at 14:53. Wasatch Electric would provide health insurance and retirement benefits.

(5) On April 17, 2019, claimant gave Strain notice that he planned to quit to accept work with Wasatch Electric on April 26, 2019.

(6) On April 26, 2019, claimant voluntarily left work to begin work with Wasatch Electric.

CONCLUSIONS AND REASONS: Order No. 19-UI-133556 is reversed and this matter is remanded for further development of the record.

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 pay an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left and reasonably be expected to continue. *Id.*

Order No. 19-UI-133556 determined that claimant quit work for Strain on April 26, 2019 to accept a definite offer of other work.¹ The order does not determine if the work was to begin in the shortest length of time as could be deemed reasonable under the circumstances or whether the offered work from Wasatch Electric paid an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left.² However, the order concluded that claimant left work without good cause because the job offered to claimant was “not expected to last more than three months,” and was therefore not reasonably expected to continue.³

The record supports the determination that claimant left work to accept a definite offer of work, and that the offered work was to begin within the shortest length of time as could be deemed reasonable under claimant’s circumstances, since it was to begin the Monday after claimant’s last Friday at work. The record also shows that the Wasatch Electric job paid more than the work claimant left with Strain. The issue for remand is whether the work was reasonably expected to continue.

Claimant stated in a letter he submitted with his request for hearing to the Department, “While this particular dispatch was for two to three months, there was the possibility of staying on with [Wasatch Electric] as it moved on to the next project.” Exhibit 1. On remand, the ALJ should conduct further inquiry to determine whether the work with Wasatch Electric was “reasonably expected” to continue. The record should be developed to show why claimant believed there was “the possibility of staying on” with the new employer after the first two to three months, whether claimant thought it was probable, and if so, why. The record should be developed to show what claimant and Wasatch Electric discussed regarding the duration of claimant’s employment and whether it was “reasonably expected” to continue at the time claimant left work.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant’s employment

¹ Order No. 19-UI-133556 at 3.

² *Id.*

³ *Id.*

with Wasatch Electric was reasonably expected to continue, Order No. 19-UI-133556 is reversed, and this matter is remanded.

DECISION: Order No. 19-UI-133556 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 10, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-133556 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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.

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