

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0751

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 134324). Claimant filed a timely request for hearing. On July 22, 2019, ALJ Murdock conducted a hearing at which the employer did not appear, and on July 23, 2019 issued Order No. 19-UI-133829, affirming the Department's decision. On August 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The U.S. Postal Service employed claimant as an assistant mail carrier from December 9, 2017 until May 26, 2019.

(2) Claimant worked full time for the employer and earned \$18.23 per hour. Claimant worked at least 40 hours per week for the employer. Claimant's weekly benefit amount was \$386.¹

(3) Before May 12, 2019, claimant interviewed for new employment as a school bus driver. On May 12, a new employer offered claimant a job as school bus driver. The new job paid \$15.50 per hour, and the new employer guaranteed claimant 40 hours of work per week. However, the job offer was contingent on claimant obtaining a commercial driver's license (CDL). Assuming she obtained a CDL, claimant understood that the new job would start on May 27, 2019 if she gave the employer two weeks' notice and stopped working on May 26. On May 12, claimant gave notice to the employer that she was quitting work effective May 26.

¹ EAB has taken notice of claimant's weekly benefit amount, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). A copy of the information has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) On May 24, 2019, claimant passed the CDL test. That day, claimant met with the new employer. At that time, the new employer told claimant that she would start training sometime between May 27 and June 2, depending on the schedule of the person who was going to train her.

(5) On May 26, 2019, claimant quit working for the employer. On May 27, claimant completed paperwork for the new employer and the new employer designated that date as claimant's official hire date. The new employer told claimant that the trainer would contact her to let her know when her training would begin.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4) (December 23, 2018). If a claimant 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 deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a). The offered work must also 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-133829 concluded that claimant did not show good cause for leaving work when she did. The order found that claimant left work to accept other work, but concluded that claimant failed to show good cause on two grounds: first, that "[a]t the time that she gave the employer advance notice of her resignation effective May 26, 2019, claimant did not have a definite offer [of] other work, as the offer was contingent upon her obtaining a commercial driver's license"; and second, that the new work was "not expected to begin in a reasonably short period of time" because "[i]t was eventually scheduled to begin on June 2, 2019, more than a week after her separation from work." Order No. 19-UI-133829 at 2. The record does not support those conclusions.

In evaluating if claimant showed good cause under OAR 471-030-0038(5)(a), the order focused on circumstances as they existed on the date claimant gave notice, May 12, and not on the date that she actually left work, May 26. However, the Court of Appeals has repeatedly held that the appropriate time to assess claimant's circumstances for good cause is as they existed when claimant actually left work and not when claimant provided notice. *See Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017) (the relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date); *see accord Kay v. Employment Department*, 284 Or App 167, 391 P3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or App 604, 403 P3d 423 (2017); *Kay v. Employment Department*, 292 Or App 700, 425 P3d 502 (2018) (*Kay II*).

There was no contingency to the job offer that claimant received to drive the school bus when the correct point in time – claimant's resignation date – is used to evaluate good cause. Claimant passed the CDL test and removed that contingency on May 24, which was two days before she left work on May 26. The job offer therefore was definite on the date claimant actually left work. With respect to the length of time between the end of claimant's work for the employer and when claimant "began" with the

new employer, claimant “began” when she was officially hired on May 27, which was the day after she actually left work with the employer. Claimant therefore began an employment relationship with the new employer the day after she quit working, which did not exceed a reasonable length of time.

As to the other requirements of OAR 471-030-0038(5)(a) for showing good cause, the evidence did not indicate that the job as bus driver was not expected to continue. Additionally, the new job driving the bus was expected to pay, on average, \$620 per week.² While the new work did not pay more than the work claimant left, it did pay more than the weekly benefit amount of \$386. Claimant has met the requirements for showing good cause under OAR 471-030-0038(5)(a).

Claimant had good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 19-UI-133829 is set aside, as outlined above.

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

DATE of Service: September 16, 2019

NOTE: 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.

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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² Based on claimant’s testimony, if the new job paid \$15.50 per hour and she worked 40 hours per week, she reasonably expected to earn \$620 per week.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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