

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1105

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 10, 2019, the Oregon Employment Department (the Department) mailed notice of a decision concluding that claimant voluntarily left work without good cause, and was disqualified from benefits effective August 25, 2019 (decision # 171751). Claimant filed a timely request for hearing. On November 6, 2019, ALJ Wyatt conducted a hearing, and on November 14, 2019 issued Order No. 19-UI-139787, affirming the Department's decision. On November 20, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision, to the extent it was based upon the hearing record.

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the August 21, 2019 HR Tracking Form including the terms under which the employer allowed claimant's request for September 12, 2019 off work. The form has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) Claimant's work experience included seven years of professional experience in event management and two years working as a real estate transaction coordinator. Claimant usually earned \$18.00 per hour.

(2) Sometime prior to August 26, 2019, claimant attended an interview for a job that was consistent with her previous nine years of experience and paid \$18.00 per hour. Claimant knew people who worked for that company, and they all told her it was highly likely that she would be hired for the job but that the employer required a minimum of three interviews.

(3) In the meantime, claimant also decided to try to look for other work even if she was overqualified, and even if it paid less than her previous employment and was inadequate to pay her living expenses. On or before August 21, 2019, claimant interviewed for a job at Consumer Cellular, the employer. The work she interviewed for was not consistent with her prior training or experience, and paid almost 17% less than she usually earned.

(4) During claimant's interview with the employer, she disclosed that she would need to take September 12, 2019 off work. The employer was reluctant to allow claimant to work because she needed that day off work, and suggested having her wait a month to enter training to avoid missing a day of training, but ultimately agreed to let her take that day off and work Saturday, September 14th instead. The employer prepared a schedule adjustment conversation record that stated:

Typically, Consumer Cellular does not allow approved time off in the first 90 days of employment but will make this one-time adjustment as outlined below. Any future days off will need to align with our normal policy (requesting time off after the first 90 days by using accrued PTO or doing a shift trade with another employee).

EAB Exhibit 1 (emphasis in original). On August 23, 2019, claimant signed the form acknowledging the terms under which the employer allowed the schedule adjustment.

(5) On August 26, 2019, claimant began working for the employer.

(6) The employer had a strict attendance policy for trainees. The policy provided that employees were allowed to miss only 10 minutes or less of work during their first week, and that if employees missed more work than that they would be terminated or required to stop training and start over the following month. Claimant understood the employer's attendance policy, and learned that the employer had required one individual who had to miss a day of training because she was in the emergency room to leave work and wait a month before re-entering training.

(7) By the end of claimant's first work day, claimant had been invited to attend the second interview for the job that was consistent with her work experience and prior earnings. The available times claimant could interview all conflicted with her normal work hours with the employer. Claimant wanted to attend the interview, but knew that the employer would likely terminate her employment if she did.

(8) On August 26, 2019, claimant sent the employer an email resigning from her job. She quit the job to attend the job interview, and because the work and pay at the employer's business was not consistent with her prior training and experience.

CONCLUSIONS AND REASONS: Claimant quit 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). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). For

purposes of applying OAR 471-030-0038(4), leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

The order under review concluded that claimant quit work without good cause because she left suitable work to seek other work, and that “[a]lthough claimant asserted that she was overqualified for her work with the employer, there is no objective evidence that the work was not suitable.” Order No. 19-UI-139787. The record does not support the conclusion that the work claimant quit was suitable.

The factors to consider when determining whether any work is suitable include, among other factors, “the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.” ORS 657.190.¹

The record does not suggest that working for the employer posed a risk to claimant’s health, safety and morals, nor does it suggest that claimant lacked the physical fitness to perform the work. Likewise, the record does not suggest that the distance of available work from claimant’s residence made the work unsuitable for her. However, other factors include claimant’s prior training, experience, and earnings. In this case, claimant’s prior training and experience were not in the field of call center/customer service work consistent with the employer’s business. Rather, claimant had worked in professional event management and real estate capacities. The work with the employer paid almost 17% less than what claimant customarily earned in her usual fields of work. The fact that claimant’s prior training, experience, and earnings were not consistent with her work for the employer suggests that the work was not suitable for claimant.

Another factor to consider includes the length of unemployment and prospects for securing local work in claimant’s customary occupation. The record is silent as to the length of claimant’s unemployment at the time she decided to try working at the employer’s business. However, at all relevant times, claimant was attending a series of interviews for work in her customary occupation and was informed that she was highly likely to receive a job offer after the interview process ended. Weighing the totality of the evidence, it is more likely than not that working with the employer was not suitable for claimant based upon her prior training, experience, and earnings, as well as her prospect for securing local work in her customary occupation. While claimant left work with the employer to seek other work, the record shows that the work claimant left was not “suitable work” within the meaning of Employment Department law. She therefore is not disqualified from benefits under OAR 471-030-0038(5)(b)(A).

Claimant is also not disqualified from benefits under OAR 471-030-0038(4). The employer had a strict attendance policy for trainees, and allowed claimant to take September 12th off work only as a “one-time” schedule adjustment. On this record it is more likely than not that had claimant asked to take August 27th, or a portion of August 27th, off work, the employer would likely either have terminated her employment or at least ended her employment while they deferred her start date for more than a month.

¹ None of the exceptions to suitable work set forth in ORS 657.195 apply here.

At the time claimant quit her job, her choices were to quit work because she knew that she would have to violate the employer's strict attendance policy to attend the interview, or face termination for violating the employer's attendance policy. Either option would result in claimant's loss of employment, either permanently or for a protracted period of time. The record suggests that claimant's actions were consistent with that of a reasonable and prudent person when she quit an unsuitable job to attend an interview that was highly likely to result in obtaining suitable work with a different employer. Any reasonable and prudent person in claimant's position would have chosen to do so rather than remain underemployed in a job that did not pay enough for her to meet her monthly expenses.

Claimant therefore voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 19-UI-139787 is set aside, as outlined above.

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

DATE of Service: December 24, 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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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 desisyong ito.

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

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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