

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1107

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant refused an offer of work without good cause, and was disqualified from benefits effective March 17, 2019 (decision # 121901). Claimant filed a timely request for hearing. On October 30, 2019, ALJ Frank conducted a hearing, and on November 7, 2019 issued Order No. 19-UI-139420, affirming the Department's decision. On November 20, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Petit Pois Daycare employed claimant as a preschool teacher. Claimant worked 35-40 hours a week and earned \$16.00 per hour.

(2) In early March 2019, claimant applied for a job with Petit A Petit daycare as an assistant teacher. Claimant asked for \$16.00 per hour. The owner of Petit A Petit told claimant that she was overpaid, and offered to pay her \$12.00 or \$13.00 per hour. Claimant did not accept the job.

(3) By mid-March 2019, the owner of Petit A Petit was in the process of acquiring ownership of Petit Pois Daycare, claimant's employer. The owner wanted to continue to employ the people working at Petit Pois Daycare under its previous ownership.

(4) In mid-March 2019, the new owner offered to continue employing claimant as a preschool teacher at Petit Pois Daycare after she assumed ownership on April 1, 2019. Claimant's duties would be the same or similar, and the new owner offered to pay claimant \$16.00 per hour, the same wage she earned under the old ownership. Claimant did not accept the offer.

(5) The median rate of pay in claimant's Portland/Tri-County labor market for pre-school teachers \$14.83 per hour.

CONCLUSIONS AND REASONS: Claimant refused an offer of suitable work without good cause.

ORS 675.176(2)(e) requires disqualification from benefits if an individual “[f]ailed without good cause to accept suitable work when offered.” OAR 471-030-0038(6) defines “good cause” as “such that a reasonable and prudent person, exercising ordinary common sense, would refuse to . . . accept suitable work when offered by the employer. * * * In determining disqualification under this section, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195.”

“In determining whether any work is suitable for an individual . . . consider, 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. Work is not suitable if the position is vacant due to a strike, lockout or other labor dispute; if the pay, hours or other conditions of work are “substantially less favorable to the individual than those prevailing for similar work in the locality”; or if the individual would be required to join, resign, or refrain from joining a bona fide labor organization as a condition of being employed. ORS 657.195. A rate of pay is “substantially less favorable” when it is “at least ten percent lower than the median rate of pay for similar work in the locality,” as determined by the Department. OAR 471-030-0037.

The first issue is whether the employer’s new owner offered claimant a job. Claimant testified that the new owner did not make her “a clear offer.” Transcript at 19. However, the Department’s witness testified that the new owner reported on two occasions that she had offered claimant continued employment in the same position and at the same rate as she had been receiving. Transcript at 8. The old owner reported on a form that claimant was offered work and then confirmed that the new owner offered claimant continued work during a phone call with the Department. Transcript at 8. The new owner also confirmed at the hearing that she offered claimant work, and confirmed that the offer was for the same job, with the same duties, hours, and rate of pay claimant had under Petit Pois Daycare’s previous ownership. Transcript at 10, 12-13. The direct and hearsay evidence consistently supporting the employer’s assertion that they offered claimant continued employment with the employer outweighs claimant’s testimony that she was not offered work. It therefore appears on this record that the employer more likely than not made claimant an offer of continued employment at Petit Pois Daycare.

The second issue is whether the offer was for suitable work. In this case, the duties would be the same as claimant had been performing for Petit Pois Daycare, and the rate of pay would have been the same, which was above the median rate for preschool teachers in claimant’s labor market. The record does not suggest that the work was otherwise unsuitable under ORS 657.190 and ORS 657.195. The offered work therefore was suitable for claimant.

The third issue is whether claimant had good cause to refuse to accept the offer of work. Claimant had previous conversations with the employer’s new owner that gave her cause for concern, including that the new owner had told her – in the context of claimant’s application for work with a different business owned by the same person – that claimant was overpaid, and had offered to pay her far less than she was earning while working at Petit Pois Daycare. Claimant’s testimony also suggests that claimant felt some uncertainty about the offer and that some terms were not clear to her. *See* Transcript at 19-23. Claimant’s concerns were such that reasonable and prudent person would have engaged in further conversation and asked the new owner to clarify the terms of employment and how much claimant

would be paid going forward. They were not the sort of concerns that would cause a reasonable and prudent person to refuse to accept suitable work. Claimant therefore did not have good cause to refuse the employer's offer of suitable work. Because claimant refused the offer of work without good cause, she is subject to disqualification from unemployment insurance benefits until she requalifies for benefits under Employment Department law.

DECISION: Order No. 19-UI-139420 is affirmed.

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

DATE of Service: December 23, 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 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 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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