

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0054**

*Reversed and Remanded*

**PROCEDURAL HISTORY:** On November 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 65310). Claimant filed a timely request for hearing. On January 2, 2020, ALJ Scott conducted a hearing, and on January 3, 2020 issued Order No. 20-UI-142025, affirming decision # 65310. On January 22, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument. 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 him 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. Claimant may offer the additional evidence during the hearing on remand; at that time the ALJ will rule on the admissibility of the evidence.

**FINDINGS OF FACT:** (1) Widewaters Portland Hotel Management employed claimant as a banquet captain from March 19, 2018 to July 14, 2019.

(2) The employer paid claimant \$12.50 per hour plus gratuities. Claimant worked between 15 to 80 per week at various times in his employment. Between March 2018 and July 2019, claimant earned \$90,059.26 in wages and tips.

(3) Claimant perceived that in 2019, his hours began to decline and he sought other work. Dabella Exteriors offered claimant a job scheduled to begin July 15, 2019. The new work was a permanent position, would pay \$11.50 per hour, was 40-hours per week, and included commissions.

(4) On July 14, 2019, claimant quit his job with the employer to accept an offer of other work. On July 15, 2019, claimant began working for Dabella Exteriors.

**CONCLUSIONS AND REASONS:** This matter is reversed and remanded for additional evidence.

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). For purposes of determining good cause, OAR 471-030-0038(5) provides:

(a) If 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. Furthermore, the offered work must reasonably be expected to continue, and must pay:

(A) An amount equal to or in excess of the weekly benefit amount; or

(B) An amount greater than the work left.

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 left work to accept a definite offer of other work that was to begin in the shortest length of time reasonable under the circumstances, and that the work was reasonably expected to continue. Order No. 20-UI-142025 at 3. The record supports those determinations.

The order under review also concluded, however, that claimant did not have good cause to quit his job with the employer to accept an offer of other work because the new job paid less than his job with the employer. Order No. 20-UI-142025 at 3. The record does not support that determination, or any determination on that issue, and this case must therefore be remanded.

In concluding that claimant's new job paid less than his job with the employer, the order under review compared claimant's gross pay from his work with the employer – which included both pay based upon an hourly rate and tips – against claimant's hourly rate of pay from his new job without consideration of his potential commissions. Although tips and commissions are wages, they should not be used in the wage comparison, however, because they are variable factors. The correct determination of whether claimant's work with the new employer paid “[a]n amount greater than the work left” under OAR 471-030-0038(5)(a)(B) is whether claimant's wage and scheduled hours from his new employer exceeded his wage and scheduled hours from the employer. Here, claimant's new employer paid him \$11.50 per hour and scheduled him to work 40 hours per week; he was therefore paid \$460.00 per week. Claimant's hourly wage with the employer was \$12.50 per hour, which is a higher hourly wage, but the record does not include what claimant's average number of hours worked were around the time he quit work. Therefore, we cannot determine whether claimant's new job – without considering variable factors like tips and commissions – paid more, less, or the same as claimant's job with the employer. This matter must therefore be remanded for additional evidence, specifically, the average number of hours claimant

worked for the employer around the time he quit work to accept a new job. Only after that evidence is in the record can a determination on that issue be reached.<sup>1</sup>

Another factor affecting claimant's decision to quit work was his perception that the employer had reduced his hours. OAR 471-030-0038(5)(e) provides that an individual who leaves work due to a reduction in hours may have quit with good cause if continuing to work substantially interferes with the return to full time work, or if the cost of working exceeds the remuneration. The record was not developed as to whether or not claimant's hours were actually reduced, and, if so, whether or not claimant had good cause to quit work due to the reduction in hours. On remand, the record must be developed in those areas, as well.

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 had good cause to quit work under OAR 471-030-0038(5)(a) or (5)(e), Order No. 20-UI-142025 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-142025 is set aside, and this matter remanded for additional evidence.

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

**DATE of Service: February 28, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-142025 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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<sup>1</sup> In reaching this decision, OAR 471-030-0038(5)(a)(A) does not apply. Claimant's weekly benefit amount was \$624, which exceeded the \$460/week the new job would pay (\$11.50/hour x 40 hours/week = \$460/week).

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). 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.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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