

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0402**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 6, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant left work without good cause and was disqualified from receiving benefits effective September 22, 2019 (decision # 103040). Claimant filed a timely request for hearing. On May 5, 2020, ALJ Messecar conducted a hearing, and on May 8, 2020, issued Order No. 20-UI-149474 affirming the Department's decision. On May 15, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Creative Culinary Creations, LLC, of Springfield, Oregon (Lane County), employed claimant, part-time, from 2018 until October 1, 2019. Claimant earned minimum wage and worked 25 to 30 hours per week. At all relevant times, the minimum wage in Lane County was \$11.25 per hour.<sup>1</sup>

(2) Prior to September 24, 2019, claimant had been looking for full-time work and was verbally offered a job by CBS in California to work as a production assistant. The terms of claimant's CBS employment were that claimant would earn \$280 per 12-hour shift, and that he would receive between one and three shifts per week. Because claimant viewed this offer as "a chance to grow and possibly attain those 40 hours a week," and because claimant felt a "necessity" to be physically closer to his mother who had

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<sup>1</sup> EAB has taken notice of the fact that the City of Springfield, Oregon is located in Lane County, and that the relevant minimum wage for Lane County is \$11.25 per hour. These facts are generally cognizable. OAR 471-041-0090(1)(c) (May 13, 2019). A copy of the information is available to the parties at <https://lanecounty.org/government/Cities> (reflecting that the City of Springfield is in Lane County) and [https://www.oregonlegislature.gov/bills\\_laws/ors/ors653.html](https://www.oregonlegislature.gov/bills_laws/ors/ors653.html) (reflecting at ORS 653.025(1)(f) that the relevant minimum wage is \$11.25 per hour). 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.

been in poor health and also lived in California, claimant decided to accept the job offer. Transcript at 14, 20-21. Per his negotiations with CBS, claimant was to contact CBS when he arrived in California and they would then provide him a start date and get him scheduled.

(3) On September 24, 2019, claimant provided a verbal, two-week notice to the employer that he would be voluntarily leaving his employment based on the CBS job opportunity he had accepted and his chance to be closer to his ailing mother.

(4) On October 1, 2019, claimant completed his shift for the day and did not return to work for the employer.

(5) From October 1, 2019 to October 15, 2019, claimant moved from Oregon (where he had been living for the last eight years) to California. During this time period, claimant got “situated with [his new] living situation,” including finding a home, getting a new license, and changing his mailing address. Transcript at 17.

(6) On October 16, 2019, claimant started his new job with CBS.

**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). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). 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.

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.

In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

The Order under review concluded that claimant left work without good cause because claimant had not established the “definiteness” requirement of OAR 471-030-0038(5) in order to support a finding of

good cause based on leaving work with one employer to accept an offer of work with another employer. The Order reasoned that “[b]ecause claimant did not have a definite start date when he quit work the job offer of the production assistant was not definite” and therefore claimant did not establish good cause to voluntarily leave work. Order No. 20-UI-149474 at 2. The record evidence does not support the Order’s conclusion.

The preponderance of the evidence demonstrates that the CBS job offer claimant received was definite. While it is true that claimant’s verbal agreement with CBS did not include a specific starting date, a specific starting date is just one factor, of many, to consider when determining the definiteness of an offer of work. Here, the preponderance of the evidence suggests that both CBS and claimant contemplated that claimant would have a job with CBS as a production assistant shortly after his arrival in California. There is no evidence in the record suggesting that CBS’s job offer was contingent upon any additional factors such as passing a drug screening or background check. Furthermore, the record evidence also demonstrates that CBS *actually employed* claimant as of October 16, 2019. Given that both CBS and claimant intended on engaging in an employment relationship upon claimant’s arrival in California with no additional preconditions to employment, and given the fact that CBS actually employed claimant on October 16, 2019, the preponderance of the evidence supports the conclusion that CBS’s offer of work to claimant was definite.

Likewise, the record evidence supports the conclusion that claimant began his new job with CBS in the shortest length of time that can be deemed reasonable under the circumstances. In order to begin his employment with CBS, claimant had to relocate from Oregon (where he had lived for the past eight years) to California and, in the process, engage in all of the normal moving-related hurdles that an individual typically has to engage in (finding a home, obtaining a drivers’ license, changing mailing addresses, etc...) when relocating across state lines. In light of the multitude of tasks involved with claimant’s decision to leave the employer on October 1, 2019 for other work with CBS, including relocating across state lines, and completing all of the relocation-related tasks that come with such a move, claimant’s ability to accomplish this multitude of tasks and begin working for CBS 15 days later on October 16, 2020, was the shortest length of time that can be deemed reasonable under his circumstances.

The record also supports the conclusion that claimant’s new job with CBS was reasonably expected to continue and paid amount greater than what he earned with the employer. Claimant provided first-hand testimony of the details of his job offer with CBS including the hours and pay that he would receive, as well as his decision to accept the offer. Because the record is silent as to any expectation on the part of CBS that claimant’s employment would be for a limited term, the record supports the inference that the employment relationship between CBS and claimant was expected to continue. In addition, the preponderance of the evidence supports the conclusion that the terms of claimant’s employment with CBS contemplated that claimant would earn a weekly wage of anywhere from \$280 to \$840, per week, depending on the number of 12-hour shifts he worked. Because this weekly pay range with CBS was greater than his weekly pay range with the employer of from \$281.25 to \$337.50<sup>2</sup>, the record supports the conclusion that claimant’s employment with CBS paid an amount greater than his employment with

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<sup>2</sup> The preponderance of the evidence demonstrates that the employer paid claimant \$11.25 per hour and that claimant worked 25 to 30 hours per week. Thus, claimant’s weekly pay while working with the employer fluctuated between \$281.25 ( $\$11.25 \times 25 = \$281.25$ ) and \$337.50 ( $\$11.25 \times 30 = \$337.50$ ).

the employer.<sup>3</sup> Under these circumstances, where claimant's work with CBS was reasonably expected to continue and where the amount of his pay from CBS was greater than the amount he received from the employer, the record supports the conclusion that claimant had good cause to voluntarily leave work and he is therefore not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 20-UI-149474 is set aside, as outlined above.

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

**DATE of Service: June 12, 2020**

**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](http://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

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<sup>3</sup> Based on claimant's weekly wage range with CBS of anywhere from \$280 to \$840, per week, the record also supports the conclusion that claimant's pay with CBS was an amount equal to or in excess of his weekly benefit amount. In this regard, EAB has taken notice of the fact that claimant's weekly benefit amount was \$249, which is contained in Employment Department records. OAR 471-041-0090(1)(c) (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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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