

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0630

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 16, 2020 (decision # 160758). Claimant filed a timely request for hearing. On August 26, 2020, ALJ Frank conducted a hearing, and on September 3, 2020 issued Order No. 20-UI-153615 affirming decision # 160758. On September 23, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Mt. Bachelor, Incorporated employed claimant as a tube attendant from November 2019 until February 16, 2020.

(2) The employer paid claimant \$11.25 per hour, and claimant worked approximately 30 hours per week.

(3) On February 6, 2020, claimant received a letter from the Oregon Parks and Recreation Department (OPRD) which offered him the opportunity to return to a seasonal park ranger position he had held with them for the previous five years, pending completion of a background check. The letter indicated, among other details, that the position paid \$2,754 per month and would start on April 6, 2020. Claimant signed and returned the letter, accepting the position.

(4) Notwithstanding the date indicated in the offer letter, claimant believed that he would likely start working for OPRD in early March 2020. He based this belief upon a call to OPRD, during which a representative told him he would probably start working in March, and his previous experience that new employees typically started work at the beginning of the month.

(5) At some point between February 6, 2020 and February 16, 2020, claimant notified the employer that he would resign effective February 16, 2020. In choosing February 16, 2020 as his last day of work, claimant understood that the employer had planned for new employees to start work soon.

(6) Due to the COVID-19 global pandemic, OPRD delayed claimant's start date. Claimant began work for OPRD at the beginning of August 2020.

CONCLUSIONS AND REASONS: Claimant quit without 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). A claimant who leaves work to accept an offer of other work "has left work with good cause 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 [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left." OAR 471-030-0038(5)(a).

The order under review correctly concluded that claimant quit working for the employer to accept a position with OPRD, and that the criteria set forth in OAR 471-030-0038(5)(a) therefore determine whether claimant quit for good cause. Order No. 20-UI-153615 at 2. In pertinent part, the Department does not consider a job offer to be definite "if [it] is contingent upon . . . [such things as] passing a drug test, background check, credit check, and/or an employer receiving a contract." Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10). The only such contingency discussed on the record was a background check, to which claimant consented upon returning the letter he had received on February 6, 2020. The record does not indicate that the background check had been completed—thus resolving any contingencies upon which the offer was based—by February 16, 2020, and it is therefore not possible to conclude whether or not the offer was definite at the time that claimant separated from work. However, this case does not ultimately turn on that question.

Order No. 20-UI-153615 further concluded that the position with OPRD was not scheduled to begin within a reasonably short period of time and was not reasonably expected to continue because it was a seasonal position. Order No. 20-UI-153615 at 2. To the latter point, the evidence on the record is convincing that the OPRD position, if not for the delay caused by the pandemic, would have likely continued for significantly longer than the tube attendant position claimant had held with the employer. The employer operates winter sports facilities on Mt. Bachelor that are inherently seasonal. Because the employer's 2019-2020 season concluded on May 24, 2020¹, claimant's position with them would likely have concluded by around that time at the latest. By contrast, while the park ranger position was also "seasonal," the record does not indicate that the position had any particular end date, and indeed claimant was still working for OPRD at least as recently as the date of the hearing. Such facts cannot reasonably support the conclusion that the new position was not reasonably likely to continue.

The record also fails to show that the new work was not set to begin in the shortest length of time as can be deemed reasonable under the circumstances. Even assuming the facts most favorable to claimant—that the position with OPRD was, at the time claimant resigned, set to begin in early March 2020—claimant has not offered convincing evidence to support a conclusion that quitting two weeks prior to

¹ EAB has taken notice of these facts, which are generally cognizable facts. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.mtbachelor.com/the-mountain/weather-operations/hours-of-operation>. 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.

the understood start date was, more likely than not, reasonable under the circumstances. Rather, claimant testified only that it “didn’t matter to [him] if [he] had a week or two” off between the two jobs and “schedule-wise, it seemed to make more sense for [the employer]” because the latter had more employees starting soon. Transcript at 15:40 – 15:55. This suggests that claimant’s choice of resignation date was arbitrary rather than based on his genuine need for time off, and therefore not reasonable under the circumstances. As a result, claimant did not have good cause to quit work on February 16, 2020.

DECISION: Order No. 20-UI-153615 is affirmed.

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

DATE of Service: October 29, 2020

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymizmo.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.



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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.