

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0685**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 10, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020 (decision # 140942). Claimant filed a timely request for hearing. On October 2, 2020, ALJ J. Williams conducted a hearing, and on October 6, 2020 issued Order No. 20-UI-154875, affirming the Department's decision. On October 23, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Multnomah County employed claimant as a service coordinator from December 3, 2018 until March 11, 2020.

(2) Claimant worked 40 hours per week for the employer for \$24.95 per hour. Old Mill Saloon also employed claimant part time as a waiter. Claimant's hourly wage at Old Mill Saloon was \$12. However, including tips, claimant earned \$30 per hour working for Old Mill Saloon.

(3) Prior to February 19, 2020, Old Mill Saloon offered claimant permanent work for 32 to 40 hours per week doing the same work for which she generally earned \$30 per hour with tips. Old Mill Saloon had no additional conditions for claimant to meet before claimant was to begin working 32 to 40 hours per week. Claimant was to begin working the increased hours at Old Mill Saloon on March 12, 2020.

(4) On February 19, 2020, claimant sent the employer notice by email that she planned to resign from work with the employer on March 6, 2020. Exhibit 2. Claimant and the employer agreed claimant would continue working until March 11, 2020.

(5) Claimant's weekly benefit amount was \$648.<sup>1</sup>

<sup>1</sup> EAB has taken notice of this fact, 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,

(6) On March 11, 2020, claimant quit work with Multnomah County to work 32 to 40 hours per week for Old Mill Saloon. On March 12, 2020, claimant began her increased hours with Old Mill Saloon.

**CONCLUSIONS AND REASONING:** 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) (September 22, 2020). “[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.

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).

Order No. 20-UI-154875 concluded that claimant left work without good cause because the record did not show that the offered work at Old Mill Saloon paid either an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work claimant left at Multnomah County.<sup>2</sup> The order therefore concluded that the offered work did not satisfy the requirements of OAR 471-030-0038(5)(a).<sup>3</sup> The record evidence does not support the order’s conclusion.

The record evidence shows that in leaving work with Multnomah County to accept an offer of other work with Old Mill Saloon, claimant left work with good cause. The offer of work was definite. Claimant was an employee of Old Mill Saloon, and had no additional conditions to meet before she began working for Old Mill Saloon on March 12, 2020. Claimant knew the pay rate, range of hours she would be working, when she would begin work, and because it was a permanent position that the work was reasonably expected to continue. Beginning work one day after she quit work at Multnomah County was reasonable under the circumstances.

The remaining issue is whether the offered work at Old Mill Saloon paid either an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work claimant left at Multnomah County. The order under review found that claimant earned \$998 per week at Multnomah County, and based on claimant’s hourly wage of \$12 without tips found that claimant would earn \$480 per week at

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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.

<sup>2</sup> Order No. 20-UI-154875 at 2.

<sup>3</sup> Order No. 20-UI-154875 at 2.

Old Mill Saloon.<sup>4</sup> However, even using the minimum number of hours offered to claimant per week (32) and claimant's earnings with tips (\$30 per hour), claimant would earn \$960 per week. Claimant's earnings of \$960 were not more than she earned at Multnomah County based on a 32-hour workweek at Old Mill Saloon. However, claimant's earnings of \$960 exceeded claimant's weekly benefit amount of \$648.

Because the offer of work from Old Mill Saloon was definite, was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, was reasonably expected to continue, and paid in excess of claimant's weekly benefit amount, claimant left work at Multnomah County with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation from Multnomah County.

**DECISION:** Order No. 20-UI-154875 is set aside, as outlined above.

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

**DATE of Service: November 25, 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>4</sup> Order No. 20-UI-154875 at 2.



# 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  
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