

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0095

Reversed & Remanded

PROCEDURAL HISTORY: On January 7, 2021, 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 benefits effective October 25, 2020 (decision # 120631). Claimant filed a timely request for hearing. On February 5, 2021, ALJ Snyder conducted a hearing, and on February 8, 2021 issued Order No. 21-UI-160615, affirming decision # 120631. On February 10, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond his 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. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information, such as the new information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Ancestry Brewing employed claimant from April 1, 2018 until October 25, 2020. Claimant's most recent position with the employer was front-of-house manager.

(2) The employer paid claimant an annual salary of \$40,000. Claimant also earned tips, which combined with his salary amounted to an annual income of about \$70,000.

(3) In late September 2020, Fireside Grill offered claimant a position as a server and bartender. The position paid minimum wage plus tips, and was expected to begin as part-time but eventually develop into full-time work. Around the same time, claimant was also offered another position at a business called Corner 14, which had yet to open. Claimant intended to supplement his income from Fireside

Grill with additional income from Corner 14. Shortly after claimant received the offer from Fireside Grill, he accepted it and gave Ancestry Brewing notice of his intent to resign as of October 25, 2020. Claimant's position with Fireside Grill was expected to begin on October 31, 2020.

(4) Claimant quit working for Ancestry Brewing on October 25, 2020 in order to begin working for Fireside Grill.

(5) Claimant worked about six shifts over the course of about two and a half weeks at Fireside Grill before the business was required to shut down due to restrictions relating to the COVID-19 pandemic. Claimant never began working for Corner 14 because the business never opened.

(6) When claimant filed his initial claim for unemployment insurance benefits, the Department determined that his weekly benefit amount was \$673.

CONCLUSIONS AND REASONS: Order No. 21-UI-160615 is set aside and this matter remanded for further development of the record.

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). 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 order under review concluded that "the new offer of work paid an amount that was both less than the work left and less than claimant's weekly benefit amount." Order No. 21-UI-160615 at 3. The record does not support this conclusion. Claimant testified that his position with Fireside Grill paid minimum wage¹ plus tips, and that he was slated to begin work on a part-time basis. Audio Record at 13:48. However, the record does not clearly indicate how many hours per week claimant expected to work once he began working for Fireside Grill, nor does it show what claimant could have expected to earn in tips. Without this information, claimant's total expected compensation at the new job is unknown. On remand, inquiry should be made on these points so as to determine whether the position with Fireside Grill paid an amount equal to or in excess of his weekly benefit amount.

Additionally, no inquiry was made at the hearing to determine whether or not the offer from Fireside Grill was contingent upon anything such as passing a drug test or background check, or whether any

¹ Claimant identified the minimum wage as \$13.50 per hour. However, the minimum wage for the Portland Metro area in October 2020 was \$13.25 per hour. EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.oregon.gov/boli/workers/Pages/minimum-wage-schedule.aspx>. 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.

such contingencies were cleared before claimant voluntarily quit. Because the job offer cannot be considered definite if it was contingent upon anything, inquiry should be directed towards this as well.

The record also contains little information about the job offer that claimant received from Corner 14. Because claimant testified that he had intended to replace his full-time position at Ancestry Brewing with part-time positions at both Fireside Grill and Corner 14, inquiry should be made on remand as to when the offer was made and accepted, what the job paid (including any tips), how many hours per week claimant had expected to work there, when it was originally expected to begin, and whether the offer was contingent upon any of the types of factors listed in OAR 471-030-0038(5)(a).

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 voluntarily quit work with good cause, Order No. 21-UI-160615 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-160615 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: March 19, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-160615 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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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 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.

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