

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0188**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 15, 2020 (decision # 53436). Claimant filed a timely request for hearing. On March 1, 2021, ALJ Murdock conducted a hearing, and on March 2, 2021 issued Order No. 21-UI-161933, affirming decision # 53436. On March 15, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). However, even had EAB considered claimant's written argument, it would not have changed the outcome of this decision because the additional information claimant submitted shows that the offer of work from Legacy Health was contingent upon claimant passing a drug test and a criminal background check. Claimant's Written Argument at 1.

**FINDINGS OF FACT:** (1) The Oregon Clinic PC employed claimant as an application analyst from January 19, 2015 until March 21, 2020.

(2) At The Oregon Clinic PC, claimant worked 40 hours per week and earned \$46.09 per hour.

(3) On March 5, 2020, Legacy Health offered claimant a job as a lab operations support specialist. Exhibit 1 at 1. The offered work was full time for \$39 per hour, and was to be a permanent position. Although claimant was not going to begin her lab operations support specialist duties until April 6, 2020, Legacy Health asked claimant to complete a physical exam, a drug test, an employee orientation, and online training before she began her duties on April 6, 2020. The offered work from Legacy Health

was not contingent on the results of claimant's physical exam, but was contingent on claimant passing the drug test.

(4) A "few days prior" to March 10, 2020, claimant told her manager at The Oregon Clinic PC that she planned to quit work on March 21, 2020 to accept an offer of other work. On March 10, 2020, claimant confirmed by email that she planned to quit on March 21, 2020. Claimant's employment with The Oregon Clinic PC ended as planned on March 21, 2020.

(5) On March 23, 2020, claimant completed a physical, an employee orientation, and online training for her position with Legacy Health that would begin on April 6, 2020.

(6) Prior to March 28, 2020, claimant completed a drug screen. On March 28, 2020, Legacy Health confirmed that claimant had passed the drug test and completed all the prerequisites to start the lab operations support specialist position on April 6, 2020. Claimant was on vacation from March 29, 2020 through April 4, 2020.

(7) On April 5, 2020, Legacy Health told claimant that it had to delay claimant's start date due to COVID-19. Later that week, Legacy Health told claimant that they were "rescinding"<sup>1</sup> the job offer and eliminating the position they had offered claimant due to COVID-19. Audio Record at 11:51.

(8) Claimant's weekly unemployment insurance benefit amount was \$648.

**CONCLUSION AND REASONS:** Claimant quit work 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); *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). 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 . . . ." Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

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<sup>1</sup> Although the parties characterized Legacy Health's actions as "rescinding" the job they offered claimant, because the record shows that claimant may have begun work on March 23, 2020 when she completed an employee orientation and online training, Legacy Health's actions may be construed as a discharge rather than the rescission of an offer. Because this decision concerns claimant's work separation from The Oregon Clinic PC, and not Legacy Health, such determination is beyond the scope of this decision, and does not affect the outcome of this decision.

Claimant left work with the employer, The Oregon Clinic PC, to accept an offer of other work from Legacy Health. Although Order No. 21-UI-161933 concluded that claimant did not begin work in the shortest length of time as can be deemed reasonable under the circumstances because claimant was on vacation from March 29, 2020 through April 4, 2020, the record does not support this conclusion. Order No. 21-UI-161933 at 3. Because claimant began work including an employee orientation and online training on March 23, 2020, the weight of the evidence shows that claimant began work with Legacy Health only two days after her employment with The Oregon Clinic PC ended. This is the shortest length of time as can be deemed reasonable under the circumstances. The Legacy Health work was reasonably expected to continue when it was offered to claimant, and when claimant gave notice to The Oregon Clinic PC. The work at Legacy Health (\$39 x 40 hours per week = \$1,560 weekly) paid more than claimant's weekly benefit amount (\$648). Because the offer of work from Legacy Health was contingent upon claimant passing a drug test, the offered work was not "definite" even though claimant later passed the drug test and even though the result of the drug test "wasn't the problem" that caused Legacy Health to "rescind" its offer of work to claimant. Audio Record at 9:34.

Despite the offered work meeting all the aforementioned criteria, however, it failed to meet the requirement that the offered work be "definite." A job offer is not definite if it is contingent upon claimant passing a drug test. Claimant stated at hearing that the job offer was contingent on "doing the drug screen." Audio Record at 9:32. Regardless of whether the drug screen caused claimant's employment to end with Legacy Health, the job offer was contingent upon the drug test, and was therefore not a definite offer of work when claimant gave her notice to The Oregon Clinic PC to quit on March 10, 2020. Claimant did not take the drug test until March 23, 2020. When claimant gave notice that she intended to quit "a few days" before March 10, 2020, and until claimant passed the drug test, her employment at Legacy Health was still conditioned upon her passing the drug test. A job offer that is contingent upon passing a drug test is not a definite offer of work.

In sum, because claimant's employment with Legacy Health was contingent on the outcome of a drug test, and claimant had not passed the drug test when she gave notice to quit work at The Oregon Clinic PC, claimant's job offer was not definite when claimant quit. Claimant did not have good cause to quit work and is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Order No. 21-UI-161933 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 21, 2021

**NOTE:** This decision denies payment of your Unemployment Insurance (UI) benefits. However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling

1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

**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](https://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.

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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 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 الإستئناف 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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