

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

Reversed & Remanded

PROCEDURAL HISTORY: On November 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with the employer without good cause and was therefore 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 of Order No. 21-UI-161933 with the Employment Appeals Board (EAB). On April 21, 2021, EAB issued EAB Decision 2021-EAB-0188, affirming Order No. 21-UI-161933. On April 26, 2021, claimant filed a request for reconsideration of EAB Decision 2021-EAB-0188 with EAB. On May 26, 2021, EAB issued EAB Decision 2021-EAB-0188-R, dismissing claimant's request for reconsideration for failure to include a statement that a copy of the request was provided to the employer.

On June 23, 2021, claimant filed a petition for judicial review of EAB Decision 2021-EAB-0188-R with the Oregon Court of Appeals. On August 5, 2021, claimant filed an amended petition for judicial review with the Oregon Court of Appeals. On December 10, 2021, claimant filed an opening brief with the Oregon Court of Appeals. On February 15, 2022, EAB filed a notice of withdrawal of order for purposes of reconsideration pursuant to ORS 183.482(6) and ORAP 4.35.

The parties may offer new information, including but not limited to information previously submitted to EAB as written argument,¹ 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.

¹ Information that has been submitted to EAB as written argument is not automatically considered as evidence for the ALJ to consider on remand.

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

(2) Claimant worked 40 hours per week for \$46.09 per hour at The Oregon Clinic PC.

(3) In early March 2020, Legacy Health offered claimant a job as a lab operations support specialist. The offered work was full time for \$38.27 per hour, and was to be a permanent position. Exhibit 1 at 16. Legacy Health's offer of work was contingent upon claimant passing a criminal background check and a drug screen. Legacy Health also required claimant to have a "pre-employment" health assessment. Exhibit 1 at 18.

(4) After Legacy Health offered claimant the job, claimant gave The Oregon Clinic PC two weeks' notice that she planned to quit work.

(5) On March 20, 2020, claimant voluntarily left work at The Oregon Clinic PC for the offer of other work with Legacy Health.

(6) On Monday, March 23, 2020, claimant completed an employee orientation with Legacy Health. On or about March 23, 2020, claimant also completed the required health assessment for Legacy Health. Claimant wanted to complete all of the "pre-employment stuff" before her spring break. Audio Record 8:53. Claimant planned to be on vacation during spring break, and "was scheduled to start" at Legacy Health on April 6, 2020. Audio Record at 9:13.

(7) On April 5, 2020, Legacy Health told claimant that it had to delay claimant's start date due to COVID-19. On June 2, 2020, Legacy Health told claimant that due to COVID-19, they were "rescinding" the job offer and eliminating the position they had offered claimant. Exhibit 1 at 5; Audio Record at 11:51.

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

CONCLUSION AND REASONS: This matter is remanded for further development of the record.

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).

Claimant quit work with The Oregon Clinic PC to accept an offer of other work with Legacy Health. To determine whether claimant left work with good cause to accept an offer of other work from Legacy Health, the record must be developed regarding several issues.

Legacy Health gave claimant an offer of work before claimant gave The Oregon Clinic PC notice that she planned to quit. However, the record must be developed to show when claimant received the offer of work from Legacy Health and the date they originally gave claimant as her start date. At hearing, claimant referred to being told that she would start work the “following Monday” after March 20, 2020, when claimant last worked at The Oregon Clinic PC. Audio Record at 8:36. However, the record requires clarification to show if claimant was originally scheduled to begin work on March 23, 2020, March 30, 2020, or some other date. The record also shows that claimant was told, at some point, that she would begin work on April 6, 2020. The record must be developed to show if and when Legacy Health changed claimant’s start date.

The record shows that after claimant received the offer of work from Legacy Health, she gave The Oregon Clinic PC two weeks’ notice that she planned to quit. On March 10, 2020, claimant gave The Oregon Clinic PC a “follow-up note” giving two weeks’ notice. Audio Record at 18:36. However, the record must be developed to show what date claimant first gave The Oregon Clinic PC notice that she planned to quit work, and what date claimant stated would be her last day of work. If claimant gave both verbal and written notice of her intent to quit, the record should provide that information, and the dates claimant gave such notice.

The record is insufficient to determine if the offered work at Legacy Health was to begin within the shortest length of time reasonable under the circumstances. Despite the dates Legacy Health gave claimant as her “start dates,” the record shows that claimant may have started work on March 23, 2020 or sometime during that week. The record requires clarification regarding what Legacy Health required claimant to complete during the week following claimant’s last day of work at The Oregon Clinic PC, and whether claimant became a Legacy Health employee at some time during that week. Claimant completed an employee orientation with Legacy Health on March 23, 2020. The record must be developed to show details regarding the orientation, including the general substance of the orientation, how long it lasted, and whether Legacy Health paid claimant for the time she spent completing the orientation. Claimant also testified that she did “some . . . online training” for Legacy Health, but the record must be developed to show when she did the training, the general nature of the training, and whether Legacy Health paid her for the training. Audio Record at 8:43. Claimant testified that she received an employee “badge” and “employee number.” Audio Record at 12:37. The record should be developed to show when claimant received the badge and employee number, and whether there were other indications that claimant began work at Legacy Health before Legacy Health told claimant they were rescinding their offer of work to claimant. The record must also be clarified as to when claimant planned to take vacation for spring break, and claimant’s agreement with Legacy Health, if any, regarding taking that time off for vacation.

An email from Legacy Health to claimant shows that claimant’s employment was “contingent upon [her] successful completion of” a (1) criminal background check, (2) pre-employment drug screen, and a

(3) pre-employment health assessment. Exhibit 1 at 18. Claimant testified that “I think it was Thursday that everything was finalized and I was supposed to start on April 6.” Audio Record at 10:28. However, the record must be developed further to show more detail regarding the “contingencies” and when they were resolved. The record shows that passing the drug screen was a condition of employment. However, the record must be developed to show if the criminal background check and the health assessment were conditions of employment that, if claimant failed them, would result in claimant being ineligible for employment. In other words, the record must be developed to show whether claimant was required to pass the health assessment as a condition of employment, or if it was merely a task to complete when she began her employment, the results of which would not disqualify claimant from employment. The ALJ should inquire as to whether a job applicant who did not pass the health assessment or provide required information such as immunization records would not be employed by Legacy Health.

In addition, regarding the conditions of employment with Legacy Health, the record must be developed to show when claimant completed the criminal background check and the drug screen, the results of the criminal background check and the drug screen, and when claimant and Legacy Health received the results. The ALJ must inquire to determine if the criminal background check and drug screen results were received before claimant gave The Oregon Clinic PC notice that she planned to quit work, and before claimant left work at The Oregon Clinic PC. Also, the ALJ must inquire as to when claimant completed the health assessment, whether claimant passed the health assessment for purposes of employment at Legacy Health, and when the results were available to claimant and Legacy Health.

Finally, in addition to the areas of inquiry described in this decision, the ALJ has the discretion to inquire into any other facts that, within the ALJ’s judgment and experience, are relevant and necessary to development of a complete record.

DECISION: On reconsideration after withdrawal of EAB Decision 2021-EAB-0188-R from the Oregon Court of Appeals, this matter is remanded to gather additional evidence as described in this decision. OAH must return this matter to EAB once those proceedings have concluded.

S. Alba, D. Hettle, and A. Steger-Bentz.

DATE of Service: April 14, 2022

NOTE: Although OAH has the statutory authority to issue a new order based on the additional and original evidence under ORS 657.275(1), EAB has not set aside or reversed the underlying order in this matter, and therefore will not require that a new order be issued in this case as a condition of return to EAB. In any event, this matter must be returned to EAB for additional proceedings upon the conclusion of the remand proceedings at OAH. EAB’s decision on reconsideration, and all additional evidence adduced at these proceedings, will be filed with the Oregon Court of Appeals as required by ORAP 4.35.



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 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 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.

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