

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0233

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 6, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020 (decision # 82212). Claimant filed a timely request for hearing. On March 23, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on March 24, 2021 issued Order No. 21-UI-163307, affirming decision # 82212. On March 29, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Abe Dental employed claimant as a full-time patient care coordinator from 2018 until March 11, 2020. The employer paid claimant a wage of \$18.00 per hour.

(2) Sometime prior to March 5, 2020, claimant requested and the employer approved a week of paid vacation from March 16 through 20, 2020.

(3) On or about March 5, 2020, claimant received an offer of work as a patient care coordinator from a maxillary surgeon's office. The offer was for permanent, full-time work that paid \$18.00 per hour and was made with no contingencies. Claimant accepted the offer and the new job was scheduled to begin on Monday, March 23, 2020.

(4) On March 5, 2020, claimant notified the employer that she was quitting work, and that her last day of work would be Friday, March 13, 2020. Claimant chose March 13, 2020 because the employer already had approved her request for paid vacation leave from March 16 through 20, 2020, and claimant expected the employer to pay her through March 20, 2020.

(5) On or about March 11, 2020, claimant asked the employer to include her paid vacation leave from March 16 through 20, 2020 in her final check. The employer refused, but told claimant that she did not have to work through her notice date of March 13, 2020. Audio Record at 12:50 to 14:20. Claimant chose not to work for the employer after March 11, 2020, and the employer allowed claimant to take paid vacation leave on March 12 and March 13, 2020.

(6) From March 16 through 20, 2020, claimant went on a previously scheduled trip to visit family. If claimant had cancelled her planned vacation, she would not have been allowed to work for the employer through March 20, 2020 or begin her new job before March 23, 2020.

(7) When claimant filed her initial claim for benefits, the Department established that claimant's weekly benefit amount was \$338.00.¹

CONCLUSIONS AND REASONS: Claimant voluntarily 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.

Where, as here, 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 record shows that the offer of other work accepted by claimant was definite, expected to be permanent, and paid an amount greater than claimant's weekly benefit amount of \$338.00 (when multiplied by 40 hours, the new job would have paid \$720.00 per week). Audio Record at 14:30 to 17:00. However, Order No. 21-UI-163307 concluded that the work did not begin in the shortest length of time that was reasonable under the circumstances, since claimant could have continued working for the employer through March 20, 2020, but chose not to do so because of a disagreement over vacation pay and a desire for a personal vacation. Order No. 21-UI-163307 at 2-3. The record does not support that conclusion.

When claimant notified the employer on March 5, 2020 that she was quitting, she selected March 13 as her last day because the employer already had approved her request for paid vacation leave from March 16 through 20, and claimant expected the employer to pay her through March 20. On March 11, however, the employer refused claimant's request to be paid through March 20, but allowed claimant to take paid vacation leave on March 12 and 13. If claimant had worked through March 13 and cancelled her planned vacation for the week of March 16, she would not have been allowed to work for the employer through March 20 or start her new job before March 23.

¹ EAB takes notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so 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(1)(c)(May 13, 2019). Unless such objection is received and sustained, the noticed fact will remain in the record.

Under the circumstances, a reasonable and prudent person would have left work on March 11 and taken paid vacation leave on March 12 and 13, instead of working those two days for the same compensation, after learning that they were not going to be paid for their pre-approved vacation leave from March 16 through 20, and would not have been allowed to continue working after March 13. And because claimant would not have been allowed to start her new job before March 23, it was to begin in the shortest length of time as can be deemed reasonable under the circumstances.

In sum, because claimant's offer of other work was definite, reasonably expected to continue and paid an amount greater than her weekly benefit amount, and the work was scheduled to begin in the shortest length of time reasonable under the individual circumstances, claimant quit work with good cause under OAR 471-030-0038(5)(a). Claimant therefore is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Order No. 21-UI-163307 is set aside, as outlined above.

S. Alba and D. Hettle;
Angela Steger-Bentz, not participating.

DATE of Service: May 6, 2021

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. 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 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.

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