

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0372

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant refused an offer of suitable work without good cause and was disqualified from receiving unemployment insurance benefits effective December 20, 2020 (decision # 135651). Claimant filed a timely request for hearing. On April 27, 2021, ALJ Frank conducted a hearing, and on April 29, 2021 issued Order No. 21-UI-165849, concluding that claimant had good cause to refuse an offer of suitable work and was not disqualified from receiving benefits. On May 5, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their 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 the employer's reasonable control prevented them 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).

FINDINGS OF FACT: (1) During December 2020, claimant's labor market area included the area from McKinleyville, California to Eureka, California, and the surrounding areas.

(2) At 10:49 a.m. on December 21, 2020, Emerald Employment (the employer) offered claimant work in Eureka, California filling their warehouse with totes. The offer of work was in writing and stated that the nature of the job would be "some heavy lifting work" moving totes in the employer's warehouse in Eureka, California beginning that same day, December 21, 2020, and continuing until December 23, 2020, for a pay rate of \$14.00 per hour. Transcript at 11. Eureka was about "40 minutes away" from claimant's home, and it was not accessible by public transportation from claimant's home. Exhibit 1. Claimant understood the details of the offer of work. At 10:52 a.m., claimant refused the offer of work from the employer because his vehicle was already in the process of having the starter replaced and claimant expected his vehicle to be inoperable until December 23, 2020.

CONCLUSIONS AND REASONS: Claimant had good cause to refuse a bona fide offer of suitable work from the employer.

ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if an individual failed without good cause to accept suitable work when offered. In a job refusal case, the burden of proof is on claimant to establish that a valid offer of work made by an employer was not suitable, or that claimant had good cause to refuse the offer. *Vail v. Employment Department*, 30 Or App 365, 567 P2d 129 (1977) (a claimant who is unemployed and who refuses an offer of employment has the burden of showing that the work offered is not suitable). However, the employer must first establish that they made claimant a *bona fide* offer of suitable work and that claimant refused it, thus making a *prima facie* showing that claimant was not entitled to benefits.

To establish that they made a “bona fide” offer of employment, the employer must show that claimant understood the “[t]he details of the job (type of work, duties, hours and days, rate of pay, start date, etc.)” Oregon Employment Department, UI Benefit Manual § 450 (Rev. April 1, 2010). Only if the employer meets that burden does the burden then shift to claimant to show the offer of work was not suitable, or to show claimant had good cause for refusing it.

Factors to consider when determining whether work is “suitable” include, in pertinent part, “the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.” ORS 657.190.

The record shows that the employer met its initial burden of showing that it made a bona fide offer of suitable work to claimant on December 21, 2020, and that claimant refused that offer. On December 21, 2020, the employer made an offer of work, in writing, which included the type of work, start date, hours and days, and rate of pay. Claimant understood the details of the offer of work, and refused the offer of work. Although claimant had concerns about the potential risk to his career as a jeweler if he engaged in cannabis-related work for the employer, claimant testified that he did not refuse the offer of work from the employer for that reason. Transcript at 16. The preponderance of the evidence in the record therefore shows that the work was suitable as defined by ORS 657.190. Because the record shows that the employer made a bona fide offer of suitable work to claimant, and that claimant refused that offer, the burden of proof then shifts to claimant to show that claimant had good cause for refusing the employer’s offer of work.

OAR 471-030-0038(6)(a) (September 22, 2020) defines “good cause” as “such that a reasonable and prudent person, exercising ordinary common sense, would refuse to * * * accept suitable work when offered by the employer.”

Claimant has met his burden to show that he had good cause for refusing the employer’s December 21, 2020 offer of work. Claimant had good cause to refuse the employer’s offer of work because claimant did not have transportation to the place of employment on December 21, 22 or 23, 2020. Claimant’s vehicle was undergoing a repair when claimant received the employer’s offer of work, and the repair was expected to take until December 23, 2020. The work location was a 40-minute drive from claimant’s home, and therefore claimant could not reasonably be expected to walk to work. Moreover,

claimant did not have access to public transportation to report to work in Eureka, and there was not sufficient time for claimant to make alternative transportation arrangements, given that the work was to begin on the same day the employer offered it. Due to the short notice of the work and claimant's lack of transportation to the work location, claimant has met his burden to show that he had good cause for refusing the employer's December 21, 2020 offer of work.

Claimant had good cause to refuse a bona fide offer of suitable work on December 21, 2020. Claimant is not therefore disqualified from receiving unemployment insurance benefits because of this job refusal.

DECISION: Order No. 21-UI-165849 is affirmed.

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

DATE of Service: June 11, 2021

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 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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