

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0507

Reversed & Remanded

PROCEDURAL HISTORY: On April 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 4, 2021 (decision # 113708). Claimant filed a timely request for hearing. On June 10, 2021, ALJ Smith conducted a hearing, and on June 14, 2021, issued Order No. 21-UI-168668, reversing decision # 133708 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On June 22, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument 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. 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 the employer's argument to the extent it was based on the record.

The parties may offer new information 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) Pacific Landscape Services Inc. employed claimant as a project manager from September 29, 2020 until April 5, 2021.

(2) In late March 2021, claimant became unhappy working for the employer due, in part, to emails he received from his manager that he considered "harassing." Transcript at 17. By the week of March 29, 2021, claimant felt he "needed to go somewhere else." Transcript at 16.

(3) At some point in late March or early April 2021, claimant saw an advertisement for a job with a different landscape services company, Crystal Greens. Claimant applied for the Crystal Greens job and had two interviews. In the interviews, claimant learned that the job was permanent and if claimant got the job, Crystal Greens would pay claimant at the same rate of pay he received from the employer, or at a higher rate, if Crystal Greens decided his experience warranted it.

(4) On April 5, 2021, at 5:59 a.m. claimant sent the employer an email advising that he was resigning his work for the employer. In the email, claimant mentioned that he was “not in good state of mind and [his] health [wa]s declining;” he “cannot continue to work under the hostile conditions;” and he was “very ill and d[id]n’t have any help from anyone.” Transcript at 6. Claimant did not report for his scheduled shift on April 5, 2021 and never returned to work.

(5) On or about April 5, 2021, claimant received a communication from Crystal Greens to come to Crystal Greens’ office to “fill paperwork out[.]” on April 12, 2021. Transcript at 22. Based on this communication, claimant believed Crystal Greens had hired him.

(6) On April 12, 2021, claimant went to Crystal Greens’ office. When claimant arrived, the Crystal Greens representative to whom claimant had been conversing with was not present. Claimant tried calling that individual but he never returned claimant’s calls. At some point thereafter, claimant learned that Crystal Greens gave the job claimant had interviewed for to someone else.

CONCLUSIONS AND REASONS: Order No. 21-UI-168668 is reversed and the matter 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). 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 claimant quit work with good cause because he left work on April 5, 2021 to accept an offer of other work from Crystal Greens. Order No. 21-UI-168668 at 2. The record as developed does not support this conclusion.

First, it is not evident from the record that claimant quit working for the employer to accept an offer of work from Crystal Greens. At hearing, claimant testified that the last straw that led to his decision to leave work on April 5, 2021 was that he “was getting harassing e-mails from [his] manager.” Transcript at 17. The record also shows that claimant’s resignation email listed declining mental health, “hostile” work conditions, and physical illness as reasons for leaving work. Transcript at 6. On remand, the record must be developed to determine why claimant quit working for the employer when he did. To this end, the ALJ should inquire whether claimant quit work on April 5, 2021 because of harassment from his supervisor, due to one or more of the reasons listed in claimant’s resignation email, to accept an offer of work from Crystal Greens, or for some other reason. To the extent Crystal Greens offered claimant a job, it is unclear from the record whether that occurred before claimant sent his resignation email in the early morning hours of April 5, 2021. If the Crystal Greens job was offered and accepted after claimant sent his resignation email, it is unlikely that claimant quit work to accept an offer of other work. Developing the record on remand to establish whether Crystal Greens offered a job to claimant and, if so, the dates on which the offer was made and accepted will therefore aid in analyzing whether the reason claimant quit work on April 5, 2021 was to accept an offer of other work for Crystal Greens. If the record on remand shows that claimant quit work for a reason other than to accept an offer of other work, the ALJ should ask questions to develop whether that reason was of such gravity that claimant had no reasonable alternative but to leave work on April 5, 2021.

Second, if the record on remand shows that claimant quit work on April 5, 2021 to accept an offer of work from Crystal Greens, additional inquiry is necessary to determine whether claimant voluntarily quit with good cause under the criteria set forth by OAR 471-030-0038(5)(a). The record must therefore be developed to assess whether the offer from Crystal Greens was definite. To this end, the ALJ should inquire about the job duties of the offered job, whether there was a firm rate of pay, the hours and days of work, and whether the offer was contingent upon claimant passing a drug test, background check, credit check or the employer receiving a contract. As to contingencies, the ALJ should inquire whether Crystal Greens’ invitation for claimant to come to its office to fill out paperwork on April 12, 2021, was for the purpose of fulfilling a contingency, such as a background check, or was intended to be the start date of the Crystal Greens job. Further inquiry is also necessary to develop the record as to whether Crystal Greens’ offer of work, if any, was to begin in the shortest length of time reasonable under the circumstances. To this end, the ALJ should inquire as to why claimant did not continue to work until the anticipated start date of the new job.

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 quit work with good cause, Order No. 21-UI-168668 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-168668 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 28, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-168668 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 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

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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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