

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0018

*Amended Order No. 21-UI-181718 Affirmed ~
Ineligible Weeks 42-21 through 46-21, Eligible Weeks 47-21 through 48-21
Order No. 21-UI-181596 Affirmed ~ Disqualification*

PROCEDURAL HISTORY: On November 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unable to work during the week of October 17, 2021 through October 23, 2021 (week 42-21) and therefore ineligible for unemployment insurance benefits for that week and until the reason for the denial had ended (decision # 161009). Also on November 2, 2021, the Department served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective July 11, 2021 (decision # 151100). Claimant filed timely requests for hearing on decisions # 161009 and 151100. On December 7, 2021, ALJ Ramey conducted hearings on decisions # 161009 and 151100. The employer did not appear for the hearing on decision # 151100. On December 10, 2021, ALJ Ramey issued Order No. 21-UI-181596, affirming decision # 151100. On December 13, 2021, ALJ Ramey issued Amended Order No. 21-UI-181718,¹ modifying decision # 161009 by concluding that claimant was unable to work, and therefore ineligible for benefits, for the weeks including October 17, 2021 through November 20, 2021 (weeks 42-21 through 46-21); but that claimant was able to work, and therefore eligible for benefits, for the weeks including November 21, 2021 through December 4, 2021 (weeks 47-21 through 48-21). On December 23, 2021, claimant filed applications for review of Amended Order No. 21-UI-181718 and Order No. 21-UI-181596 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Amended Order No. 21-UI-181718 and Order No. 21-UI-181596. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0018 and 2022-EAB-0019).

¹ ALJ Ramey originally issued Order No. 21-UI-181593 on December 10, 2021, which reached the same conclusions as Amended Order No. 21-UI-181718. Amended Order No. 21-UI-181718 was issued to correct a clerical error in Order No. 21-UI-181593.

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), Amended Order No. 21-UI-181718 is **adopted**. The remainder of this decision relates to Order No. 21-UI-181596, regarding whether claimant voluntarily quit work with good cause.

FINDINGS OF FACT: (1) Gosselin Construction employed claimant as an administrative assistant from March 1, 2021 until July 12, 2021.

(2) The employer paid claimant \$23.50 per hour. Claimant worked 40 hours per week.

(3) On July 9, 2021, claimant received an offer of employment from another employer. The offer was for full time work, paid \$26.44 per hour, and was to begin on August 9, 2021. At the time the offer was made, claimant understood the offer to be for a permanent position. Prior to beginning work for the new employer, claimant was required to complete a background check and obtain a license from the local gaming commission. Claimant accepted the offer the same day.

(4) On July 12, 2021, claimant voluntarily quit working for the employer in order to accept the offer of work with the new employer. Claimant's background check and licensing process were not completed until later in July 2021 or early August 2021. If claimant did not successfully clear the background check and licensing process, she would not have been able to begin working for the new employer.

CONCLUSIONS AND REASONS: Claimant voluntarily 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, background check, credit check, and/or an employer receiving a contract." Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

Claimant voluntarily quit work on July 12, 2021 in order to accept an offer of other work. The other work paid more than what the employer paid claimant. Claimant also understood the position to be permanent, and therefore reasonably expected it to continue. However, under OAR 471-030-0038(5)(a) and the Department's policy, the offer of work was not "definite" at the time that claimant voluntarily quit because it was still contingent upon claimant's having cleared a background check and contingent

upon claimant obtaining the appropriate licensure. Claimant's offer of work did not become definite until sometime later in July 2021 or early August 2021, after claimant quit work. Because the offer of work was not definite at the time claimant quit, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective July 11, 2021.

DECISION: Amended Order No. 21-UI-181718 and Order No. 21-UI-181596 are affirmed.

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

DATE of Service: February 3, 2022

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 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 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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