

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0461

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 30, 2022 (decision # 151458). Claimant filed a timely request for hearing. On April 5, 2022, ALJ Ramey conducted a hearing at which the employer failed to appear, and on April 7, 2022 issued Order No. 22-UI-190740, affirming decision # 151458. On April 11, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his 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 claimant's reasonable control prevented him 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) Valorem employed claimant as a senior security architect from February 1, 2021 until February 2, 2022.

(2) The employer paid claimant a salary of about \$180,000 per year for full time work.

(3) On February 1, 2022, another employer offered claimant a job which was to pay claimant a base salary of \$230,000 per year for full time work. The job was slated to start on February 7, 2022, and was a permanent position. The written offer stated, "This offer is also contingent upon the Company's review of and satisfaction with your employment references and the results of any background checks." Exhibit 1 at 2. Notwithstanding that clause in the offer letter, the new employer would have allowed claimant to begin work for them prior to the completion of his background check and reference verification. Claimant and the new employer's chief financial officer both signed the offer letter on February 1, 2022.

(4) On February 2, 2022, claimant quit working for the employer. Per the terms of the new employment offer, claimant was not permitted to continue working for the employer after he signed the offer. The background check and reference verifications had not been completed at the time that claimant resigned.

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.

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 to accept other work. The order under review concluded that claimant quit without good cause because, as it was “still contingent upon claimant’s having cleared a background and reference check,” the offer of work was not definite at the time that claimant quit. Order No. 22-UI-190740 at 3. The record does not support that conclusion.

The record shows that the offer of other work paid more than what the employer had paid claimant, was permanent, and was to begin in the shortest length of time reasonable under the circumstances. To the last point, the record shows that the employment offer did not allow claimant to continue working for the employer once he had accepted the offer, and that the new job was slated to begin less than a week after claimant quit. Thus, the expected start date of February 7, 2022 (following the February 2, 2022 resignation date) was the shortest length of time reasonable under the circumstances for the new work to begin.

In addition to the above factors, under OAR 471-030-0038(5)(a), when an individual quits in order to accept other work, the offer of other work must be “definite.” In other words, the offer must not be contingent upon any factors such as the individual’s successful completion of a background check or reference verification. The written offer that the new employer made to claimant would at first glance suggest that the offer was contingent upon those factors. In fact, it stated as much explicitly. That language notwithstanding, however, the record shows that the offer was not actually contingent upon those factors. At hearing, claimant testified that the background check and reference verification were to be “done after” he actually started the job. Audio Record at 12:30. Claimant’s testimony is uncontroverted, and is further supported by the short time period between when the offer was made and when claimant was to start the new position, which suggests that the new employer would not have had sufficient time to complete both items prior to claimant’s planned start date of February 7, 2022.

Because the employment relationship commenced before those items were completed, the offer was not contingent upon their completion. Therefore, the preponderance of the evidence supports the conclusion that the job offer was definite. And absent evidence that claimant had reason to believe the employer would terminate the employment relationship after completing the background check and reference verification, the record shows that the offered work was likely to continue.

Claimant therefore quit work to accept an offer of other work that paid more than the previous employer, was reasonably expected to continue, was to start in the shortest length of time reasonable under the circumstances, and was definite. Claimant therefore quit work with good cause, and is therefore not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

DECISION: Order No. 22-UI-190740 is set aside, as outlined above.

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

DATE of Service: June 23, 2022

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.

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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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