

AMENDED EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1081-A

Affirmed
Disqualification

NOTE: This amended decision is being issued solely to correct an omission error in EAB Decision 2022-EAB-1081. The correction appears in bold with yellow highlight below.

PROCEDURAL HISTORY: On May 13, 2022, 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 April 10, 2022 (decision # 93636). Claimant filed a timely request for hearing. On October 7, 2022, ALJ Scott conducted a hearing and issued Order No. 22-UI-204621, affirming decision # 93636. On October 25, 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). Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) R&R Nursery and Landscape employed claimant at their Salem branch from August 2021 until April 11, 2022. Claimant worked as a landscaper.

(2) On April 4, 2022, the employer discussed claimant taking a new position with them after the future closing of the Salem branch. The employer informed claimant this position would primarily require working in Wilsonville, however, if the Wilsonville location did not have available work, claimant

would report to other job sites. The employer offered another employee from the Salem branch a similar position.

(3) Claimant's existing position and the offered position were in landscaping and required substantially the same duties. The offered position would have given claimant a one-dollar raise over his previous hourly wage, as well as an employer provided vehicle and fuel cards for transportation from Salem to worksites, and pay for half of his commuting time.

(4) On April 4, 2022, claimant expressed that he would accept this new position.

(5) Over the weekend of April 9, 2022, the employer permanently closed the Salem branch and removed all of their belongings. They did not notify claimant of the closure of the branch that weekend.

(6) On April 11, 2022, claimant arrived at the Salem branch before the start of his shift, found the building empty, and left. Claimant attempted to contact the employer by phone, but did not reach the employer and did not leave a message. The employer intended claimant and a coworker to begin their new positions on that day, and left a truck for them to use to get to the worksite. However, the employer only informed the coworker that the Salem branch had closed over the weekend, and claimant left before this coworker reported for work. Based on the empty building and lack of communication with the employer, claimant believed he had been discharged.

(7) Later that day, claimant contacted the coworker who was offered the similar new position. This coworker told claimant that the employer had texted him that morning about the branch closure and directed him to take the truck to Estacada for work that day.

(8) On April 13, 2022, the employer contacted claimant to determine whether he still intended to work in the new position. Claimant responded, "I won't be coming back. Sorry for no notice. The empty shop really threw me off. I didn't know it would go down like that. I can't work out of Estacada." Exhibit 1 at 1.

(9) The employer had work available for claimant in Wilsonville at the time claimant refused it, and claimant's coworker, who accepted a similar position, primarily worked in Wilsonville after his first day.

(10) On April 23, 2022, claimant filed his initial claim for unemployment insurance benefits.

CONCLUSIONS AND REASONS: Claimant refused a suitable offer of work without good cause.

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.

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.

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.”

The employer made claimant a bona fide offer of suitable work. During the conversation of April 4, 2022, the employer did not know when the Salem branch would close, and since the start of the new job was contingent on that closing, neither party knew at that time when the job would be available to claimant. However, after the branch closed, the new job became immediately available to claimant. Due to misunderstandings between the parties, claimant was not aware that the job was available to start until April 13, 2022. Claimant refused the offer by text on April 13, 2022. Therefore, he bears the burden of showing the work was unsuitable or that he had good cause for refusing it.

The work that claimant refused was suitable. Claimant had previously been employed by the same employer and would have performed similar landscaping duties in this position and as in his previous position as a landscaper. The offered position had the same inherent risks as the previous position and would have required the same training and experience. Additionally, the new position would have paid claimant a greater hourly wage. Claimant argued that the position was unsuitable because it would have required him to work out of Estacada. However, the record does not show how often, if at all, he would have had to work in Estacada. When the employer offered claimant the new position, the employer stated that the position was in Wilsonville. At hearing, the employer’s witness testified that the position primarily involved working in Wilsonville, that there was still work out of Wilsonville, and that the coworker that accepted a similar position worked in Wilsonville. Transcript at 30. Claimant testified that the employer told him that work at the job site in Wilsonville was “on hold,” but did not offer evidence of how long this was for, or whether it remained “on hold” when he rejected the position. Transcript at 16. Claimant also testified that his coworker, who accepted a similar position, told claimant that he worked his first day of the new job in Estacada. Transcript at 17. However, the does not establish that the offered position primarily involved work in Estacada. The record therefore reflects that the work was primarily in Wilsonville, which was suitable for claimant. Given this, as well as the similarities to claimant’s previous employment, the position was suitable for claimant.

Claimant’s refusal to accept the offer of work was without good cause. At hearing, and in his text reply to the owner, claimant stated that he refused the offered position because he would not work in Estacada. Ex. 1 at 1, Transcript at 18. However, the record does not show how often, if at all, he would have had to work in Estacada. Claimant concluded that the employer had changed the terms of the job offer, with regard to the work location, based on the statement of his coworker and the employer’s statement that the Wilsonville job was “on hold”. Transcript 16-17. However, claimant did not take steps to verify this understanding before refusing to work. Claimant could have contacted the employer to confirm whether the Wilsonville job was still “on hold” and whether he would be required to report to Estacada every day. Similarly, he could have contacted his coworker to determine whether he continued

to report to Estacada after the first day. A reasonable and prudent person, exercising ordinary common sense, would have clarified the location of the new position before refusing work.

Claimant refused an offer of suitable work, without good cause, and therefore is not eligible to receive unemployment insurance benefits.

DECISION: Order No. 22-UI-204621 is affirmed.

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

DATE of Service: January 3, 2023

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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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