

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1252

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective December 27, 2020 (decision # 141732). Claimant filed a timely request for hearing. On December 7, 2022, ALJ Adamson conducted a hearing, and on December 8, 2022 issued Order No. 22-UI-209219, affirming decision # 141732. On December 17, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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. 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 claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Prior to December 28, 2020, claimant applied for a position with Lane County to work at the employer's solid waste transfer facility. Claimant subsequently attended an interview with the employer.

(2) Approximately a week after the interview, the employer invited to attend an "orientation" session. Transcript at 5. Prior to attending the orientation, the employer did not convey to claimant details of the position such as rate of pay, work schedule, number of hours per week, or duties involved.

(3) On December 28, 2020, claimant attended the “orientation” session with the employer. Claimant understood the session to be an informational opportunity to learn more about the position and determine whether he would “like to proceed” with employment. Transcript at 5–6. Claimant completed some “paperwork” for the employer that day. Transcript at 7. During the session, the employer provided claimant with the relevant details of the position. Among other details, claimant learned that the position paid \$12.24 per hour and offered about ten to twelve hours per week, which would have provided claimant with significantly less income than he had previously earned. Claimant also learned that the position was not closely related to his previous work experience. Claimant also met with the supervisor for the position, who gave claimant a tour of the facility and let claimant shadow one of the other employees. Claimant did not perform any of the duties of the position for which he applied.

(4) After the “orientation” session, claimant went home. The employer did not inform claimant that day that they expected him to return for scheduled work.

(5) On December 29, 2020, the employer called claimant and asked him if he would be “willing to start the following week.” Transcript at 9. Claimant declined the employer’s offer of work because the position paid “significantly below” his past earnings, and offered few hours per week. Transcript at 11.

(6) Although claimant did not expect to be paid for attending the “orientation” session on December 28, 2020, and did not fill out a timecard or otherwise submit a record of hours worked, the employer later paid him for his time.

CONCLUSIONS AND REASONS: No work separation occurred, and claimant therefore is not disqualified from receiving benefits based on a work separation from the employer.

ORS 657.176(2) requires, in relevant part, a disqualification from unemployment insurance benefits if an individual has been discharged or suspended for misconduct connected with work or if the individual has voluntarily left work without good cause. “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (September 22, 2020).

The order under review found that the employer employed claimant starting on December 28, 2020, and that claimant voluntarily quit work on December 29, 2020. Order No. 22-UI-209219 at 1–2. Based on these findings, the order under review concluded that claimant voluntarily quit work without good cause. Order No. 22-UI-209219 at 2. The record does not support this conclusion or the findings upon which it was based.

In order for a voluntary quit to have occurred, claimant must have “worked” for the employer, as that term is defined by OAR 471-030-0038(1). Inherent to work—that is, a “continuing relationship between an employer and an employee”—is that an employment relationship has first been initiated. Such a relationship cannot be initiated unilaterally. Rather, it requires both parties to agree upon a set of terms which result in an arrangement of remuneration for services performed.¹ The record lacks evidence to show that the parties reached such an agreement.

¹ See, e.g., ORS 657.040.

First, claimant did not believe himself to have accepted an offer of employment simply by attending the employer's "orientation" session. Prior to attending it, claimant did not have sufficient information to be able to determine whether he was interested in the position, and attended the orientation specifically so he could make that determination. Certain facts, such as the fact that claimant filled out "paperwork" and the fact that the employer later paid him, suggest that claimant might have had reason to know that the employer had considered him hired. However, these facts are too circumstantial to rebut claimant's general assertion that he had not been hired, and in any case do not show that claimant *agreed* to begin an employment relationship.

Further, the record does not show that the employer ever explicitly offered claimant the position prior to December 29, 2020, or that claimant agreed to accept the position. At hearing, the employer's witness purported to contradict this, testifying that claimant "would have been offered the position over the phone . . . [and] would have been instructed at the time when he was given the offer over the phone . . . to attend new employee orientation on his first day[.]" Transcript at 15–16. However, the employer's witness did not offer evidence to show what actually occurred in claimant's circumstances. The witness offered only speculative testimony as to what *might* have happened based on the employer's typical practices. Because claimant's account is based on his own firsthand observations, the employer's testimony is therefore afforded less weight than claimant's, and the preponderance of the evidence does not show that claimant ever agreed to accept the position.

For the above reasons, the record shows that claimant and the employer did not establish an employment relationship. Therefore, claimant's decision to decline the employer's offer of work on December 29, 2020 did not constitute a work separation, and claimant is not disqualified from receiving unemployment insurance benefits based on a work separation.

DECISION: Order No. 22-UI-209219 is set aside, as outlined above.

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

DATE of Service: February 15, 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.

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 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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