

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0211

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 22, 2022, 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 10, 2022 (decision # 142842). Claimant filed a timely request for hearing. On January 18, 2023, ALJ Blam conducted a hearing, and on January 24, 2023 issued Order No. 23-UI-213497, modifying decision # 142842 by concluding that claimant voluntarily quit without good cause and was disqualified from receiving benefits effective April 3, 2022. On February 12, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed written arguments on February 12, 2023 and March 10, 2023. EAB did not consider claimant's February 12, 2023 written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Claimant's March 10, 2023 argument contained information that was not part of the hearing record. However, because the record contains inconsistencies of material fact that were not resolved at hearing, EAB has considered the new information in claimant's March 10, 2023 argument under OAR 471-041-0090(1)(a) (May 13, 2019) as necessary to complete the record. The additional information in claimant's written argument has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Webfoot Painting Co. employed claimant as a field supervisor from May 5, 2010 until April 8, 2022.

(2) Including bonuses, the employer paid claimant an hourly rate that resulted in an average hourly wage of about \$34. Claimant worked full time for the employer.

(3) In or prior to February 2022, claimant became concerned about various aspects of the employer's company culture. After an incident in which claimant felt that the owner of the company disrespected him, causing him to believe that the employer intended to discharge or demote him, claimant decided to look for another job.

(4) On March 25, 2022, claimant received an offer of employment from another painting company which had recently secured a painting contract with a general-construction company. The contract included enough work to keep the new employer, and claimant, "busy through winter." EAB Exhibit 1 at 6. The offered work was as a supervisor, paid \$35 per hour for full time work, and was expected to begin during the second or third week of April 2022. EAB Exhibit 1 at 6. That day, claimant accepted the offer and gave the employer notice that he intended to quit on April 8, 2022. Claimant understood that the new job was supposed to start in the second or third week of April 2022, but was uncertain of the exact start date of the new job because "in new construction, there are no guaranteed start dates." EAB Exhibit 1 at 3. Claimant chose April 8, 2022 as his last day of work as a compromise so that he could give the employer sufficient notice to replace him while avoiding potentially leaving the new employer without a supervisor when the new contract started. *See* EAB Exhibit at 3-4.

(5) On April 8, 2022, claimant last worked for the employer. Claimant intended to begin work with the new employer by April 18, 2022. However, "a few days before" the new job was set to begin, the new employer's contract was canceled, and the new employer was therefore unable to start claimant as scheduled. EAB Exhibit 1 at 6. Claimant eventually started working for the new employer in late 2022.

CONCLUSIONS AND REASONS: Claimant voluntarily quit 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). 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) (September 22, 2020). 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 April 8, 2022 in order to accept an offer of other work that was expected to start by April 18, 2022. As a preliminary matter, the order under review found that claimant quit work both for this reason and because he "believed he was in danger of being demoted or discharged." Order No. 23-UI-213497 at 2. However, the record shows that the offer of other work was the proximate cause that led claimant to quit when he did. At hearing, claimant testified that he put in his notice to the employer after he received the offer from the new employer "because [he] wasn't going to be without a job." Transcript at 15. This shows that, while claimant might have been motivated to look for other work due to frustrations he had with the employer, it was the offer of other work that caused

him to actually quit when he did. Therefore, this analysis focuses solely on whether claimant had good cause to voluntarily quit work in order to accept other work.

The order under review concluded that claimant did not have good cause to voluntarily quit to accept other work because the offer of work was not definite and the new position “was not set to begin in the shortest length of time as can be deemed reasonable under the circumstances.” Order No. 23-UI-213497 at 3. The record does not support this conclusion.

First, the record shows that the offered work paid more than what the employer paid claimant. Likewise, given that the new employer indicated that the new work was likely to keep them busy “through the winter,” it can be inferred that the new employer expected work to be available for claimant for the better part of a year, and was therefore reasonably likely to continue.

The record also shows that the offer was definite. Under the Department’s interpretation of OAR 471-030-0038(5)(a), an offer of work is not definite if it is contingent upon something such as an employer receiving a contract. The order under review found that “claimant’s hiring was dependent on the new employer obtaining a contract from a construction contractor, which did not occur.” Order No. 23-UI-213497. However, the record shows that the new employer *had* obtained the contract prior to offering claimant the job, and that it was only after claimant accepted the offer and left his previous role that the new employer’s contract fell through. *See* EAB Exhibit 1 at 6, Tr. 14-15. Thus, the offer was not contingent on the possibility of the new employer obtaining a contract and as a result, the offer was definite.

Finally, the record shows that the new work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Claimant left work on April 8, 2022, and expected to begin work by April 18, 2022. As he explained in his written argument, however, he chose to leave at that point because he did not know precisely when the new job was going to start, owing to the uncertain nature of new-construction work. If claimant remained working for the employer until he received notice that the new job was starting, he risked giving the employer insufficient notice of his intent to leave. Likewise, if he gave the employer a full three weeks’ notice of his intent to leave and the new employer needed him a week earlier, he risked leaving the new employer without a supervisor for the first week of the new project. To avoid both of these risks, claimant chose to leave on a date that essentially split the difference between the two. Under these circumstances, this was the shortest length of time that could be deemed reasonable.

For the above reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 23-UI-213497 is set aside, as outlined above.

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

DATE of Service: April 5, 2023

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.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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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