

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0116

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 4, 2024, 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 November 5, 2023 (decision # 105955). Claimant filed a timely request for hearing. On January 24, 2024, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on January 26, 2024, issued Order No. 24-UI-246611, affirming decision # 105955. On January 30, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) FedEx Office & Print Services employed claimant as a store manager from June 2021 until November 8, 2023. Claimant worked at the employer’s store in Battle Ground, Washington.

(2) On October 30, 2023, a prospective employer, Apollo Consulting, offered claimant a sales representative job. The new job orientation for the position was to begin on November 11, 2023, with an official start date of November 13, 2023. The job was a full-time, permanent position and would pay approximately \$62 per hour. Apollo Consulting did not state that the job offer was dependent upon claimant satisfying any contingency, such as successfully completing a background check. Claimant accepted Apollo Consulting’s job offer on October 30, 2023.

(3) On November 1, 2023, claimant gave the employer notice of his intent to resign effective November 8, 2023. Claimant decided to quit working for the employer effective November 8, 2023, so that he could begin working for Apollo Consulting.

(4) On November 8, 2023,¹ claimant worked his last day for the employer as planned.

¹ At hearing, the ALJ asked “Is it correct that you separated from the employer on November 8th, 2023” to which claimant answered simply, “uh, yes.” Audio Record at 2:11. Later in the hearing, however, in the middle of a response to a question about when the job with Apollo Consulting was to begin, claimant stated, “I don’t have my calendar but . . . Thursday was

(5) After claimant finished his last day of work for the employer, claimant received an email from Apollo Consulting. The email advised that claimant was required to complete a background check for the sales representative job claimant had accepted. Claimant filled out and submitted the background check form to Apollo Consulting that same evening.

(6) On November 11, 2023, claimant attended the new job orientation for the sales representative job.

(7) On November 12, 2023, Apollo Consulting informed claimant that he had failed the background check and that they would not allow claimant to work as a sales representative starting November 13, 2023.

(8) At the time claimant quit work, he earned \$26.06 per hour working for the employer as a store manager at the Battle Ground, Washington store.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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). 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).

The order under review concluded that claimant quit working for the employer without good cause because the offer of work from Apollo Consulting was not definite. Order No. 24-UI-246611 at 2. The record does not support this conclusion.

my last day, I believe.” Audio Record at 10:52. The Thursday of that week was November 9, 2023. Thus, claimant provided evidence that his last day worked and date of his voluntary leaving was either November 8 or November 9, 2023. The weight of the evidence favors Wednesday November 8, 2023 as the date claimant left work. Claimant’s testimony establishing that date was offered without hesitation in response to a direct question, whereas claimant’s later reference to Thursday was offered with less certainty given that claimant stated that he did not have his calendar with him to verify dates and offered the testimony with the equivocation, “I believe”.

Claimant quit working for the employer in order to accept the sales representative job with Apollo Consulting. Claimant therefore quit work to accept an offer of other work, which means that OAR 471-030-0038(5)(a) governs whether claimant voluntarily left work with good cause. Claimant met the elements of OAR 471-030-0038(5)(a). First, the Apollo Consulting job was to begin on November 13, 2023, less than a week after resignation from the employer with orientation beginning before the start date. This constituted the shortest length of time for the work to begin that was reasonable under the circumstances. Next, the Apollo Consulting job was a full-time, permanent position and therefore was reasonably expected to continue. Third, the Apollo Consulting job paid an amount greater than the work claimant left because the Apollo Consulting job paid \$62 an hour whereas claimant's job working for the employer paid \$26.06 per hour.

Finally, the offer of work from Apollo Consulting was definite. The record shows that when Apollo Consulting offered claimant the sales representative job, they did not state that the job offer was dependent upon claimant satisfying any contingency, such as successfully completing a background check. Claimant accepted the position the same day it was offered on October 30, 2023. Claimant then gave a week's notice of his intent to quit and resigned as planned. Only after completing his last day of work for the employer did claimant receive the email from Apollo Consulting advising that he was required to complete a background check. Because Apollo Consulting imposed the condition that claimant pass a background check only after claimant accepted the job and quit working for the employer, the imposition of the background check contingency did not make the offer of work indefinite. Accordingly, the offer of work from Apollo Consulting was a definite offer.

For these reasons, claimant fulfilled the elements of OAR 471-030-0038(5)(a). Claimant therefore voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-246611 is set aside, as outlined above.

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

DATE of Service: March 5, 2024

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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