

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0180

Reversed & Remanded

PROCEDURAL HISTORY: On November 17, 2023, 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 benefits effective October 1, 2023 (decision # 144408). Claimant filed a timely request for hearing. On January 29, 2024, ALJ Fraser conducted a hearing and issued Order No. 24-UI-246716, affirming decision # 144408. On February 16, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Lane Council of Governments employed claimant as a site manager for the employer's Meals on Wheels program from April 2014 until October 5, 2023.

(2) Claimant worked 18 hours per week for the employer and was paid \$27.33 per hour at the time of her separation. The employer did not permit claimant to work more than 18 hours per week, as they otherwise would have been required to offer her benefits. Nevertheless, the employer did provide claimant with paid time off (PTO) for the majority of her tenure.

(3) In late 2022 or early 2023, the employer conducted an internal review and determined that per their policies, claimant and others who worked less than 20 hours per week should not have been accruing PTO. Later in 2023, the employer notified their employees working less than 20 hours per week that they would no longer be entitled to accrue PTO, other than state-mandated sick leave, effective January 2024. When claimant learned of this pending policy change, she was dissatisfied with the loss of benefits and decided to look for work elsewhere.

(4) On September 14, 2023, claimant received an offer to work as a guest liaison at a resort located in Guatemala, beginning November 15, 2023. The position was to pay \$800 per month plus an additional \$200 per month if claimant conducted eco-tourism tours for the resort's guests. In addition to the monthly salary, claimant's compensation was also to include daily room and board valued at \$180 per day. The offer was not contingent on a background check, drug screen, or any similar requirements.

(5) The resort's season ran from at least November through the end of June, at which point there would be a "lull" in business and the resort would not require claimant's services. Transcript at 9. After the end of the season, claimant understood that the resort would have her resume work at the beginning of the following season. Claimant had previously visited the resort on several occasions, had established a rapport with the resort's owner, had family living nearby, and had "roots in... the culture." Transcript at 9.

(6) Claimant accepted the resort's employment offer, and on September 26, 2023, notified the employer that she would be quitting effective October 5, 2023. Claimant continued working for the employer through October 5, 2023.

(7) Claimant quit approximately six weeks prior to her intended start date at the resort because she had intended to rent out her home in Oregon and prepare for the international move.

(8) After claimant quit, the State Department issued an advisory warning against travel to Guatemala because of civil unrest in the country at the time. As a result, claimant determined that it "wasn't safe" for her to move to Guatemala, and withdrew her acceptance of the job offer. Transcript at 11.

CONCLUSIONS AND REASONS: Order No. 24-UI-246716 is set aside and this matter remanded for further development of the record.

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 an offer of work at a resort in Guatemala. The order under review determined, however, that claimant quit "because she would be losing her fringe benefits[.]" Order No. 24-UI-246716 at 3. The record does not support this conclusion. At hearing, the ALJ asked claimant, "Would you have put in your notice if they had continued with the vacation pay, holiday pay, and sick leave pay?" Transcript at 22. Claimant responded that she would not have. Transcript at 22. However, the record also shows that claimant became aware of the employer's change in PTO policy earlier that year. Despite this, claimant did not immediately quit, but instead waited to quit until after she had received and accepted a job offer. Given these facts, it is clear that while claimant's decision to quit was motivated by the change in PTO policy, her decision to quit at the particular time she did was the direct

result of having received and accepted the job offer. The facts have been found accordingly, and it is therefore appropriate to consider claimant's work separation under the provisions of OAR 471-030-0038(5)(a). The record as developed shows that claimant's circumstances met at least three of the four requirements of that rule.

First, the job offer was not contingent upon claimant having fulfilled any requirements, such as submitting to a background check or drug screen, prior to being permitted to start work. Therefore, the job offer was definite.

Next, the offered work was reasonably expected to continue. While the position was seasonal—the resort only needed claimant for approximately 7 and a half months out of the year—the record shows that claimant had good reason to believe that she would have been asked to return for the following season. There is no indication, for instance, that the resort had intended to hire her merely for one season and then dismiss her. Additionally, claimant explained that she has personal and cultural ties to that area of Guatemala and already had established a rapport with the owner of the resort. Under such circumstances, a reasonable person would conclude that they likely would be asked to continue working for the resort in subsequent seasons.

Further, while the resort had intended to pay claimant significantly less in cash remuneration compared to the employer in this matter, claimant's overall compensation would have been significantly more.¹ Working 18 hours per week for the employer, paid at \$27.33, would have grossed claimant \$25,580.88 per year.² By contrast, the resort would have paid claimant between \$800 and \$1,000 per month in cash, plus daily room and board worth \$180 per day. Conservatively estimated, this would have resulted in the resort paying claimant a combined gross of approximately \$47,220 in a single season lasting 229 days.³ Therefore, the offered work paid an amount greater than the work claimant left.

However, further development of the record is necessary to determine whether the offered work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Claimant quit on October 5, 2023, and intended to begin the new position approximately six weeks later, on November 15, 2023. Regarding the gap between jobs, claimant explained at hearing, "that gave me a reasonable amount of time since I was moving internationally to secure my, uh, my house and, uh, my details here in Oregon so that I could go down there. So I felt that was a reasonable amount of time for me to start the date." Transcript at 10. While claimant may have subjectively felt that she needed six weeks to settle her affairs and move to Guatemala, further information is necessary to determine whether

¹ OAR 471-030-0038(5)(a) does not define "pay" for purposes of determining whether to include noncash remuneration in calculating which job paid more. However, ORS 657.105(1) states, "'wages' means all remuneration for employment, including the cash value, as determined by the Director of the Employment Department under the regulations of the director, of all remuneration paid in any medium other than cash." Additionally, OAR 471-030-0017(3) (December 14, 2022) defines "remuneration," except where paid for agricultural labor or domestic service, to include "the value, determined pursuant to OAR 471-031-0055(3), of compensation paid in any medium other than cash." In turn, OAR 471-031-0055(2) (December 25, 2005) considers "[b]oard, lodging, services, facilities, or privileges furnished by an employer," with the exception of circumstances not applicable here, to be "remuneration." In the absence of guidance to the contrary, it is therefore reasonable to construe "pay," for purposes of this matter, to include the cash value of noncash remuneration.

² $\$27.33 \times 18 \times 52 = \$25,580.88$.

³ $\$800 \times 7.5 \text{ months} = \$6,000$. $\$180 \times 229 = \$41,220$. $\$6,000 + \$41,220 = \$47,220$.

that period was, objectively, the shortest length of time reasonable under the circumstances. On remand, the ALJ should develop the record to show what tasks claimant was required to complete prior to moving to Guatemala, how long they took, and whether claimant could have completed some or all of those tasks while continuing to work for the employer.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant voluntarily quit work with good cause, Order No. 24-UI-246716 is reversed, and this matter is remanded.

DECISION: Order No. 24-UI-246716 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 22, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-246716 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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