

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0583

Reversed
Claimant Disqualified from Receiving Benefits but Subsequently Requalified
Eligible Weeks 20-24 through 30-24

PROCEDURAL HISTORY: On June 12, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause on December 27, 2023, and therefore was disqualified from receiving unemployment insurance benefits and was denied benefits on his claim from May 12, 2024, through September 7, 2024 (decision # L0004469194).¹ Claimant filed a timely request for hearing. On July 31, 2024, ALJ Adamson conducted a hearing at which the Department failed to appear and issued Order No. 24-UI-260996, modifying decision # L0004469194 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective December 24, 2023.² On August 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of Department records that show that claimant earned \$11,684 in wages from subject employment during the first quarter of 2024, that claimant claimed benefits for the weeks of May 12, 2024, through July 27, 2024 (weeks 20-

¹ Decision # L0004469194 stated that claimant was denied benefits from May 12, 2024 to September 7, 2024. However, the dates of disqualification are incorrect. Disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. See ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning December 24, 2023 (the Sunday beginning the week of claimant's December 27, 2023 quit date) and until he earned four times his weekly benefit amount in subject employment. As explained in this decision below, as of the end of the first quarter of 2024, claimant had earned four times his weekly benefit amount in subject employment and was no longer disqualified from receiving benefits based on the work separation.

² Although Order No. 24-UI-260996 stated that it affirmed decision # L0004469194, it modified that decision by changing the effective date of the disqualification to December 24, 2023, when the administrative decision had stated that claimant was disqualified from receiving benefits and was denied benefits from May 12, 2024 to September 7, 2024. Order No. 24-UI-260996 at 3.

24 through 30-24), and that the Department did not pay claimant benefits for those weeks. EAB is admitting this additional evidence into the record as necessary to complete the record, the evidence 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) Washington Park Transportation Management Association (“Washington Park”) employed claimant as a digital media and design specialist from October 30, 2023, until December 27, 2023.

(2) In September 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$624.³

(3) Claimant worked 20 hours per week for Washington Park, at \$27.50 per hour. Claimant’s weekly work schedule for Washington Park was such that he worked 8 hours on Mondays, and then had flexibility to decide how to allocate his remaining 12 hours of work among the remaining days of the week.

(4) In December 2023, claimant began a discussion with a prospective employer, Industry, to take a graphic design job with them. Industry expressed interest in offering claimant a full-time job.

(5) On December 21, 2023, claimant signed a contract with Industry to work as a graphic designer. Per claimant’s contract, the Industry job was to start on January 8, 2024, was “a temporary full-time position,” and had an end date of April 26, 2024. *See* Exhibit 1 at 6. The Industry job paid \$23 per hour. Industry did not require claimant to fulfill any contingencies before starting the job.

(6) Per claimant’s contract, Industry chose to have claimant start the new job on January 8, 2024. Washington Park’s office was closed during the week of December 31, 2023, through January 6, 2024. For the week of December 24, 2023, through December 30, 2023, the eight hours of work claimant typically would have performed on Monday, December 25, 2023, was covered by paid time off due to the Christmas Day holiday. *See* Exhibit 1 at 3. Claimant had only one project remaining to complete for Washington Park that week, and had flexibility as to when to complete his remaining 12 hours for the week. Claimant’s birthday was on December 28, 2023, and he did not wish to work that day or the day after. Claimant and his manager agreed that claimant would work his remaining hours on December 26 and December 27, 2023, turn in his final project on December 27, and have Wednesday December 27, 2023, be his last day of work.

(7) On Wednesday December 27, 2023, claimant quit working for Washington Park as planned. Claimant quit to accept the offer of other work from Industry.

³ EAB has taken notice of facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(8) During the period of January 1, 2024, through March 31, 2024, claimant worked for Industry and earned \$11,684 in subject wages. *See* EAB Exhibit 1 at 1.

(9) In mid-May 2024, following a short contract extension, claimant's job working for Industry concluded. *See* Exhibit 1 at 6. Thereafter, claimant claimed benefits for the weeks of May 12, 2024, through July 27, 2024 (weeks 20-24 through 30-24). *See* EAB Exhibit 1 at 1. The Department did not pay claimant benefits for weeks 20-24 through 30-24. *See* EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause. Claimant was disqualified from receiving benefits effective December 24, 2023. However, claimant subsequently requalified and was eligible to receive benefits for weeks 20-24 through 30-24, so long as he is otherwise eligible.

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 work without good cause because he left work to accept an offer of other work from Industry, but that, under OAR 471-030-0038(5)(a), the offered work did not begin in the shortest length of time reasonable under the circumstances and was not reasonably expected to continue. Order No. 24-UI-260996 at 3. The record does not show that claimant failed to meet the element requiring the work to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. The record does show, however, that claimant failed to meet the element requiring that the offered work be reasonably expected to continue. Claimant therefore left work without good cause and was disqualified from receiving benefits effective December 24, 2023. Nevertheless, Department records show that claimant requalified by earning four times his weekly benefit amount during the first calendar quarter of 2024, and therefore was eligible to receive benefits for weeks 20-24 through 30-24, so long as he is otherwise eligible.

Addressing the elements of OAR 471-030-0038(5)(a), first, the offer of work from Industry was definite because it was a job offer in which the pay, hours, and duration were defined by contract, and no

contingencies such as drug testing or background checks were required to be completed for claimant to begin the job. Next, the offer of work from Industry paid an amount that was more than claimant's weekly benefit amount. Claimant's weekly benefit amount was \$624. The Industry job paid claimant \$23 per hour, full time, which is \$920 per week.⁴

The record evidence is sufficient to conclude the work was to begin in the shortest length of time reasonable under the individual circumstances. As specified in claimant's contract, Industry chose for the offered work to begin on January 8, 2024. It was not possible for claimant to continue to work for Washington Park the week of December 31, 2023, through January 6, 2024, because Washington Park's office was closed that week. Furthermore, it was reasonable for claimant and his manager to agree for claimant's last day to be December 27, 2023. It was reasonable because the eight hours of work claimant typically would perform for Monday, December 25, 2023, was covered by paid time off due to the Christmas Day holiday, and claimant had flexibility when to work his remaining 12 hours for the week. The record supports the inference that claimant completed his remaining work hours on Tuesday December 26 and Wednesday December 27, as agreed, and then turned in his final project on December 27. Under these circumstances, it was reasonable for claimant and his manager to agree for December 27, 2023, to be claimant's last day of work. The fact that December 28, 2023, was claimant's birthday and he did not wish to work that day or the day after is immaterial.

However, although claimant met the three elements discussed above, the record shows that the element requiring that the offered work be reasonably expected to continue was not met. Claimant left work to accept an offer of work at Industry that, by the terms of his contract, was a temporary position with a defined end date of April 26, 2024. *See* Exhibit 1 at 6. Thus, claimant left work for a limited duration job that was not reasonably expected to continue. Because claimant left work for a job that was not reasonably expected to continue, under the terms of OAR 471-030-0038(5)(a), claimant left work without good cause. Claimant therefore voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits effective December 24, 2023.

That is not the end of the analysis, however. Decision # L0004469194 stated that the effect of claimant's voluntary leaving of work from Washington Park was that claimant was denied benefits for the weeks of May 12, 2024, through September 7, 2024. Department records show that claimant claimed the weeks of May 12, 2024, through July 27, 2024 (weeks 20-24 through 30-24), and that the Department did not pay claimant benefits for these weeks. EAB Exhibit 1 at 1. However, Department records further show that in the first quarter of 2024 (January 1, 2024, through March 31, 2024), after claimant quit working for Washington Park but before he claimed week 20-24, claimant earned \$11,684 in subject wages from Industry.

Under ORS 657.176(2), where an individual has been determined to have voluntarily left work without good cause, they are "disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter . . . for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred[.]" In other words, when an individual was, as claimant was here, disqualified under ORS 657.176, to be eligible to receive benefits for future weeks, the individual must requalify by

⁴ \$23 x 40 hours = \$920. *See* OAR 471-030-0022 (January 11, 2018) ("'Full-time work,' for the purposes of ORS 657.100 is 40 hours of work in a week except in those industries, trades or professions in which most employers due to custom, practice, or agreement utilize a normal work week or more or less than 40 hours in a week.").

earning subject wages equal to four times their weekly benefit amount beginning with the week after the week of their disqualification.

Applying these principles, claimant was requalified to receive benefits when he claimed weeks 20-24 through 30-24, and cannot be denied benefits for those weeks on the basis of the disqualification resulting from claimant's voluntary leaving from Washington Park. This is so because claimant was disqualified effective December 24, 2023, but then went on to earn \$11,684 in wages from Industry during the period of January 1, 2024 through March 31, 2024, thereby requalifying to receive benefits because \$11,684 is more than four times his \$624 weekly benefit amount.⁵ That means as of when claimant claimed weeks 20-24 through 30-24, he no longer was disqualified from receiving benefits, and should not have been denied benefits based upon his previous disqualification that was effective December 24, 2023.

For these reasons, claimant was disqualified from receiving benefits but has subsequently requalified. Claimant therefore is eligible to receive benefits for weeks 20-24 through 30-24, so long as he is otherwise eligible.

DECISION: Order No. 24-UI-260996 is set aside, as outlined above.

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

DATE of Service: August 28, 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.surveygizmo.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.

⁵ Claimant's weekly benefit amount was \$624. Four times \$624 is \$2,496. \$11,684 is more than \$2,496.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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