

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0008

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 29, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80145). Claimant filed a timely request for hearing. On December 16, 2013, ALJ Lohr conducted a hearing, and on December 18, 2013 issued Hearing Decision 13-UI-05776, affirming the Department's decision. On January 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Olson Pediatric Clinic employed claimant as a radiologic technologist from September 1, 2003 until September 12, 2013. Claimant was paid \$27 per hour and worked 32 hours per week.

(2) In July 2013, one of the employer's doctors told claimant that the employer could no longer afford to pay her wage and was considering hiring a limited technician to perform her duties at a reduced wage and working fewer hours per week. The doctor did not tell claimant that the employer was going to let her go. At some point in approximately August 2013, claimant learned that the employer intended to pay the limited technician \$17 per hour and to eliminate all benefits for that position. In August 2013, claimant told the employer's office manager that she could not afford to work at the reduced pay for the reduced hours that the employer envisioned the limited technician would work. The employer would not have sought to hire a limited technician to take claimant's position if claimant were willing to continue working for a technician's pay and for the hours the employer thought it needed a technician.

(3) In August 2013, the employer placed an advertisement to hire a limited technician. Also in approximately August 2013, claimant started interviewing for new jobs. On September 11, 2013, a representative from Physicians Medical Center called claimant and told her it was interested in possibly hiring her and it "wanted to talk to [her] more about offering [her] a position." Transcript at 11. The

representative told claimant Physicians Medical Center could not make her a job offer until she passed a background check and a drug test.

(4) On September 12, 2013, claimant submitted a written resignation letter to the employer. At that time, claimant had not taken or passed a drug test or a background check for Physicians Medical Center, did not have a definite start date for a new job, did not know the pay for the new job and Physicians Medical Center had not made an actual job offer to her. In her resignation letter, claimant stated “when the opening at Physicians Medical Center [in McMinnville] opened last week, I was very surprised and very hopeful of the possibility to transition into a similar setting. I interviewed on Tuesday, the 10th [September] and was offered the position yesterday, the 11th. Prior to the interview for this job I talked with [the office manager and a coworker] about not giving the two week notice. This was only going to occur if [the coworker] was able to start working full time, and a limited tech was hired.” Transcript at 18-19. Claimant quit work on September 12, 2013 and did not return to work thereafter. At that time claimant quit work, the employer had not yet hired a limited technician. Transcript at 10, 22.

(5) On September 24, 2013, Physicians Medical Center told claimant that it was not offering her a job. It and claimant were unable to agree on the wages, benefits and hours for the new job.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). When a claimant leaves work to accept an offer of other work good cause exists only if, among other things, the offer is definite and the work is to begin in the shortest length of as can be deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a).

Claimant argued in her written argument that she did not leave work because she thought she “had another job lined up.” Written Argument at 1. Claimant contended she quit because of an imminent reduction to her pay and benefits and because the employer was going to replace her with a limited technologist. *Id.* However, the record shows that claimant quit the day that she did because she thought she had another job. Transcript at 6, 18, 23, 25-26. Claimant agreed at hearing she could have remained employed for some additional days if she had decided not to quit when she did and waited for a definite job offer from some new employer. Transcript at 10. Although claimant attempted to characterize her leaving as occasioned by the employer hiring a limited technician to replace her, she did not rebut the testimony of the employer’s office manager that the employer would not have hired this replacement unless claimant had stated she was unwilling to work at reduced pay, and did not rebut the office manager’s testimony that the employer had not yet hired the replacement by September 12, 2013, the day claimant quit work. Transcript at 5, 7, 8, 22. While the record shows claimant may have started searching for a new job because the employer intended to reduce the compensation for her position, the preponderance of the evidence establishes that claimant could have continued working for the employer if she had chosen to. The preponderance of the evidence also shows that claimant would not have

chosen to quit work on September 12, 2013 unless she thought she had a new job with Physicians Medical Center. The proximate cause for claimant leaving work was the possibility of this new job.¹

The Department's Benefits Manual (revised April 2, 2013) states that a job offer is not definite within the meaning of OAR 471-030-0038(5)(a) if it does not include the "conditions of hire (rate of pay[...])" and it is "contingent upon anything," "including a contingency on passing a drug test [or] a background check." Benefits Manual (rev. April 2, 2013), Ch. 400, §442(B). At the time claimant quit work, any job offer from Physicians Medical Center remained contingent on her ability to pass a drug test and a background check, and the conditions of her hire, including her rate of pay, benefits and hours and start date, had not been established. Transcript at 12, 27, 28. Because the job for which claimant quit was not a definite offer at the time she left work, OAR 471-030-0038(5)(a) establishes that she did not have good cause to leave work when she did.

On the facts, as presented, claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 13-UI-06776 is affirmed.

Susan Rossiter and D. E. Larson;
Tony Corcoran, not participating.

DATE of Service: February 6, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

¹ In her written argument, claimant contended OAR 471-030-0037(August 1, 2004) applied to her decision to quit work if she quit due to the reduction in her rate of pay. We do not consider this argument since we have determined that the cause of her leaving work was the prospect of a new job with Physicians Medical Center.