

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0090

*Reversed
Disqualification*

PROCEDURAL HISTORY: On September 25, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision #153623). The employer filed a timely request for hearing. On December 2, 2013, ALJ Clink conducted a hearing, and on December 31, 2013 issued Hearing Decision 13-UI-07387, affirming the Department's decision. The claimant did not participate in the hearing. The employer participated in the hearing and was represented by Ann Kirkpatrick. On January 14, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Blue Heron Farm employed claimant as a blueberry picker from July 2, 2013 to July 9, 2013.

(2) Claimant did not return to work after July 9, 2013. The employer did not know why claimant failed to return to work. Claimant did not give the employer a reason. The employer had continuing work available at the time claimant left work.

CONCLUSIONS AND REASONS: We disagree with the Department and the ALJ and conclude 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). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

In Hearing Decision 13-UI-07387, the ALJ concluded claimant voluntarily left work with good cause. The ALJ based this conclusion on information claimant provided to the Employment Department, and not on evidence provided at hearing.¹ Although the Department's administrative decision states claimant left work due to lack of transportation, the Department's administrative decision is not evidence we consider to determine if claimant had good cause to leave work. Claimant did not participate in the hearing, and offered no evidence at hearing regarding the reason she left work. Nor did the employer offer evidence about claimant's reason for leaving work. The record therefore fails to show by a preponderance of the evidence that claimant left work for a reason of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time. We therefore conclude claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 13-UI-07387 is set aside, as outlined above.

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

DATE of Service: February 11, 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 Hearing Decision 13-UI-07387 at 2.