

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0770

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112355). Claimant filed a timely request for hearing. On April 15, 2014, ALJ M. Smith conducted a hearing, and on April 17, 2014 issued Hearing Decision 14-UI-15436, affirming the Department's decision. On May 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Therefore, we did not consider claimant's written argument when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Chemeketa Community College employed claimant from January 14, 2014 until January 16, 2014. Claimant worked as an adjunct professor, and was paid \$18.00 per hour for four hours of work per week. Her position was scheduled to end March 20, 2014.

(2) Claimant received an offer of work from University of Hawaii. The work offered was as a professor, would pay \$30.00 per hour for 18.66 hours of work per week. The work was scheduled to begin January 23, 2014 and end approximately March 18, 2014. Claimant accepted the offer of work.

(3) On January 16, 2014, claimant notified the employer that she quit work. She did not work again after that date.

(4) On January 22, 2014, claimant moved her residence to Hawaii. On January 23, 2014, claimant began work at University of Hawaii.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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) (August 3, 2011). 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 her employer for an additional period of time.

OAR 471-030-0038(5)(a) provides, in pertinent part, that for purposes of applying OAR 471-030-0038(4), an individual who leaves work to accept an offer of other work has good cause for leaving if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the work pays more than the work left, and the work is reasonably expected to continue.

We agree with the ALJ that claimant satisfied the first three elements of OAR 471-030-0038(5)(a). Claimant’s offer of work from the University of Hawaii was a definite offer, as it included terms that signified a mutual understanding between claimant and the University such as the pay rate, start date, position and ending date. The work began in the shortest length of time as can be deemed reasonable, given that only six days lapsed between claimant’s last day of work for the employer in Oregon and her first day of work after permanently moving her residence from Oregon to Hawaii. Furthermore, the work paid \$30.00 per hour for 18.66 hours of work per week, which was significantly more than the \$18.00 per hour for four hours of work per week that claimant left.

In Hearing Decision 14-UI-15436, however, the ALJ also concluded that claimant did not show good cause for leaving work because claimant failed to show that the job she left work to accept was reasonably expected to continue. *See* Hearing Decision 14-UI-15436 at 3. We disagree.

The Department has not defined the term “reasonably expected to continue” to require that the offered work last any particular length of time. To determine whether offered work is “reasonably expected to continue,” the individual circumstances of the case must be examined. In this case, claimant left a job that was scheduled to end to accept an offer of other work that was also scheduled to end only two days earlier than the work left. Given that the jobs were expected to last substantially the same amount of time, and that the work claimant left her job to accept paid over seven times more than the work she left, considering the totality of the circumstances within the context of claimant’s employment prospects and earning potential in either job, the offered work can be said to have been reasonably expected to continue.

For those reasons, we conclude that claimant quit work with good cause to accept an offer of other work. Therefore, she is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 14-UI-15436 is set aside, as outlined above.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: June 13, 2014

This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks 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 website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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