

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1806

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144440). Claimant filed a timely request for hearing. On October 30, 2014, ALJ Triana conducted a hearing at which the employer did not appear, and on October 31, 2014 issued Hearing Decision 14-UI-27969, affirming the Department's decision. On November 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she principally contended that, for various equitable reasons, she should not be disqualified from benefits. Although claimant's circumstances appear to have been emotionally and financially difficult, none of the reasons that she presented were relevant to whether she had good cause to leave work when she did. Claimant also objected to the hearing decision on the ground that the owner of the business for which she left her job to accept an offer of new work did not appear as a witness at the hearing. Claimant's argument did not state what, if any information, the owner might provide about the offer of new work in addition to that which claimant provided at hearing, and none is apparent to us. For these reasons, EAB considered only information in the hearing record when reaching this decision.

FINDINGS OF FACT: (1) Amy's Kitchen, Inc. employed claimant as a production worker from November 8, 2010 until August 7, 2014.

(2) While claimant was working for the employer, she lived in Medford, Oregon. The employer paid claimant \$9.37 per hour for 40 hours of work per week. Claimant's position with the employer was permanent.

(3) In July 2014, the owner of Busy Bee, a housekeeping service, discussed with claimant the possibility of working for it in Shaver Lake, California. The owner was a friend of claimant's brother, who lived in or near Shaver Lake. Claimant declined the offer because of the recent deaths of both her parents.

(4) On August 7, 2014, Busy Bee's owner called claimant to ask her if she was ready to come to work for Busy Bee in Shaver Lake. Claimant understood that she was being offered work cleaning some vacation rental cabins in Shaver Lake. The owner told claimant she was going to pay her \$10 per hour for her housekeeping work and that she thought Busy Bee was going to have claimant work for 40 hours per week during the busy seasons of winter and summer. Claimant understood that she was not guaranteed 40 hours of work every week, and her weekly hours would vary depending on the volume of business at the vacation rentals until it "picked up [again]." Audio at ~20:08, ~20:26, ~20:47. Busy Bee's owner asked claimant to come down to Shaver Lake immediately to start work on August 11 or August 12, 2014 because "the season had picked up again." Audio at ~8:40. Claimant agreed to do so.

(5) After August 7, 2014, claimant did not report to work for the employer. Claimant did not notify the employer that she was quitting work. Claimant voluntarily left work on August 7, 2014 to accept the new job that Busy Bee's owner had offered to her.

(6) Over the weekend of August 9 and August 10, 2014, claimant drove from Medford to Shaver Lake. On August 11, 2014, after she reached Shaver Lake, claimant tried to reach Busy Bee's owner on her cell phone but was not able to do so. On August 12, 2014, claimant reached the owner and asked her when she should start work. The owner told claimant that business had "slowed down" and she would have no work for her until business "picked back up again." Audio at ~19:46. The owner asked claimant to "hang on" and stated that business should "pick up again in the snow season." Audio at ~19:38. Claimant called Busy Bee's owner several times between August 12 and approximately August 26, 2014, and the owner still did not have any work for claimant. On approximately August 26, 2014, claimant told Busy Bee's owner that she could not wait any longer to start work. Shortly afterward, claimant left Shaver Lake and returned to Medford.

(7) Claimant's weekly benefit amount was \$282.

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 the offer of work is definite, the offered work is to begin in the shortest reasonable length of time under the circumstances, the offered work is reasonably expected to continue and the offered work pays 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). The standard for demonstrating good cause is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

Claimant left work to accept the new job with Busy Bee. Audio at ~8:27. However, from the manner in which claimant described her work for Busy Bee as contingent on the summer and winter vacation seasons, it was not clear that she reasonably expected the new job to continue. In fact, when the ALJ inquired of claimant what would happen when the volume of customers renting the vacation cabins slowed down in the off-seasons, claimant stated that the job with Busy Bee was "temporary until [the business] picked back up again." Audio at ~20:08. Moreover, although claimant testified that she was going to make approximately 63 cents per more hour at the new job than she made working for the

employer, she did not provide any reliable information about whether, given the hours that she might reasonably expect to work on average at that new job, her weekly income was likely to exceed that which she earned at her job with the employer. Audio at ~16:28, ~12:18. Nor did claimant present any information that based on the average hours she reasonably expected to receive at the new job her income from the new job would likely exceed her weekly benefit amount. For these reasons, claimant did not meet her burden to show either that the new work was reasonably likely to continue or that the pay she received from the new work was reasonably likely to equal or exceed her weekly benefit amount or the compensation that she received from the employer. Claimant did not establish good cause under OAR 471-030-0038(5)(a).

Claimant did not show good cause for leaving work to accept the new job that Busy Bee had offered her. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-27969 is affirmed.

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

DATE of Service: January 8, 2015

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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