

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1842

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 73753). The employer filed a timely request for hearing. On November 12, 2014, ALJ R. Davis conducted a hearing, and on November 20, 2014 issued Hearing Decision 14-UI-29106, concluding claimant quit work without good cause. On December 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Cannon Beach Vacation Rental employed claimant as a housekeeper from July 3, 2014 to August 16, 2014. Claimant's pay rate was \$15 per hour.

(2) The employer managed approximately 78 vacation rental properties. Each property was located within a couple of miles of the employer's offices, except one property that was approximately six miles from the offices. The employer established timelines for cleaning most of the properties. The number of hours allotted for each property depended on factors such as the size of the property and number of bedrooms. The employer expected claimant to pick up linens, drive from the employer's office to the property, and complete all the cleaning duties for that property within the established timelines. Under certain circumstances, the employer paid claimant her straight hourly wage for cleaning certain properties.

(3) The employer expected claimant to report her time to the employer using a time sheet. The time sheet had space for claimant to indicate the established timeline for the properties she cleaned, but also included additional space for claimant to write other information, for example, if she spent more time cleaning a property than the establish timelines indicated, or if she was cleaning based on a straight hourly wage rather than the employer's timelines. The employer did not prohibit employees from claiming more time than the timelines indicated, or instruct employees not to report the actual number of hours they worked in a given day.

(4) Claimant felt she frequently had to spend more time waiting, driving and cleaning than the employer had allotted for the properties she cleaned. She estimated that when the extra time was factored in, her actual earnings totaled approximately half of her hourly wage, and less than the state-mandated minimum wage. Claimant repeatedly complained about the pay structure to the head housekeeper, but she never reported her additional hours to the employer or notified the employer that she believed she was owed additional wages.

(5) In mid-August 2014, claimant applied for a job with Beach House Vacation Rentals. She “was pretty sure” she would receive a job offer. Transcript at 12. On August 16, 2014, claimant quit her job with the employer by having her husband send the employer a text message. That text message was the first notice the employer had that claimant felt there were problems with her pay. After claimant quit her job with the employer, Beach House Vacation Rentals offered her a job, and she accepted it.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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) (August 3, 2011). 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 her employer for an additional period of time.

Claimant testified that the main reason she quit work on September 16th was because she got another job. Transcript at 10. However, individuals who quit work to accept an offer of other work are considered to have quit work with good cause only if the offer was definite. OAR 471-030-0038(5)(a). Claimant testified that, at the time she quit working for the employer, she was only “pretty sure” she would receive a job offer, but, at the time she quit, she had not been offered, and had not accepted, other employment. Transcript at 12. Because claimant had not accepted a definite offer of other work at the time she quit her job with the employer, she did not have good cause to quit work for that reason.

To the extent claimant sought the other job and quit work with the employer because of her pay structure, claimant also did not establish good cause for quitting. As a preliminary matter, claimant did not establish that her pay structure had the effect she claimed. For example, claimant alleged that she had to travel up to 10 miles per assignment, when all the assignments except one were within a couple of miles of the employer’s office. She claimed that it took twice as long to clean the employer’s properties as the employer estimated, cutting her pay in half, but did not provide any specific details supporting her claim. Given those inconsistencies, claimant’s testimony about those matters was not reliable.

Even assuming her testimony that she was underpaid was accurate and reliable, the outcome of this decision would remain the same. Claimant admitted that she never reported her actual hours to the employer. Transcript at 23, 25. She never told the employer she thought she was working for half as much as her promised hourly rate of pay, never told the employer her earnings totaled less than

minimum wage, and never gave the employer the opportunity to address claimant's complaints. *See* Transcript at 19, 23, 25. Because claimant quit work without affording the employer any opportunity to respond to her concerns, and failed to show that doing so would have been futile or unreasonable under the circumstances, claimant failed to show that she had no reasonable alternative but to leave work when she did.

Claimant failed to show good cause for quitting. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-29106 is affirmed.

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

DATE of Service: January 13, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.