

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0383**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131366). Claimant filed a timely request for hearing. On March 17, 2015, ALJ Wymer conducted a hearing at which the employer did not appear and issued Hearing Decision 15-UI-35267, affirming the Department's decision. On April 4, 2015, 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) United Parcel Service, Inc. employed claimant as a driver-helper from December 2, 2014 until December 3, 2014.

(2) On December 2, 2014, both the employer and Nature's Health Food Store interviewed claimant for work. That day, the employer offered her a temporary, seasonal job as a driver-helper. Claimant understood that she was hired as an on-call employee and would earn \$9.10 per hour. The employer scheduled claimant for an orientation. On December 3, 2014, claimant completed some pre-hire paperwork and attended the orientation. The employer did not provide a work schedule to claimant.

(3) On December 3, 2014, after the employer's orientation, the owner of Nature's Health Food Store offered claimant a job in the delicatessen she thought she might open in the store. Claimant understood that she would earn \$9.10 per hour working for Nature's. The owner did not tell claimant when her work for Nature's was going to start or the number of hours she would work per week, and did not give her a tentative work schedule. Claimant accepted the job with Nature's, when and if it opened a store deli.

(4) On December 3, 2014, after claimant accepted the job with Nature's, she sent an email to the employer's representative who had conducted the orientation earlier that day. Claimant informed the

representative that, while she had accepted the job with Nature's, she would also like to work for the employer. In the email, claimant asked if there were "any openings early in the morning in stocking or anything? I understand you're looking for driver helpers, but the time slot is when my other job opportunity [Nature's] wants me. I can work any time before [n]oonish any day of the week [for the employer]. . . . [ I] really think I would be a great asset to your company. If not [ ]now, maybe here in the future." Exhibit 1 at 1. When she wrote the email, claimant wanted to convey to the employer that she intended to make Nature's her principal job and that she would be available to work for the employer if the employer scheduled her for work that did not conflict with her schedule at Nature's when that schedule was established.

(5) After December 3, 2014, the employer did not schedule claimant for any work. Nature's never opened the deli. Sometime after December 3, 2014, Nature's owner told claimant if she did not open the deli, she would assign claimant to work as a cashier or in Nature's produce department. The owner still did not give claimant a start date. Claimant never worked for Nature's.

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

The first issue this case presents is the nature of claimant's work separation from the employer. If claimant could have continued to work for the same employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

While claimant did not contend that the employer discharged her, she took the position at hearing that she did not sever the work relationship with the employer because she never stated that she quit and offered to continue working for the employer if the way in which she was scheduled to work did not conflict with her schedule at Nature's. Audio at ~16:18, ~16:54, ~17:43; Claimant's Written Argument at 1. However, the language of claimant's December 3, 2014 email to the employer strongly suggests that that, by conditioning her work schedule for the employer on her Nature's work schedule, she was not going to be able to perform the driver-helper work at the hours for which the employer had hired her. Exhibit 1 at 1. Although claimant might have offered to work in other capacities for the employer if it could accommodate her schedule at Nature's, such a proposal cannot operate to continue the employment relationship if it constitutes a refusal to perform the essential requirements of the job for which she was hired during the hours the employer expected her to be available for work. The closing sentences of claimant's December 3, 2014 email to the employer also show that she recognized she was demanding a fundamental change to her work for the employer and, if it the employer did not want to make that change, she was quitting. By requiring such a change as a condition of continuing to work for the employer, the employer reasonably interpreted claimant's email as expressing her unwillingness to continue working in the capacity for which she was hired. Claimant's work separation was a voluntary leaving on December 3, 2014.

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). For a claimant who leaves work to accept and offer of other work, good cause exists only if, among other things, the offer of new work is "definite." OAR 471-030-0038(5)(a). The standard for showing good cause 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 quit work with the employer to take the job that Nature's had offered to her. The Department has issued guidelines stating that, to be "definite" within the meaning of OAR 471-030-0038(5)(a), a job offer must include an "expected start date" to ensure that a claimant does not "[leave] the old job too soon." Oregon Department of Employment, Benefit Manual (rev April 1, 2010), Ch 400 §442(B). Claimant admitted at hearing that Nature's never gave her an expected date when she would start working for it. Audio at ~15:18, ~20:17. Claimant did not demonstrate that the job offer for which she left work was "definite." Accordingly, claimant did not show that she had good cause for leaving her job with the employer to accept the offer of new work with Nature's.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-35267 is affirmed

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

**DATE of Service:** May 21, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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