

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0766

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72142). Claimant filed a timely request for hearing. On June 8, 2015, ALJ Vincent conducted a hearing, and on June 12, 2015, after having reviewed the record, ALJ Holmes-Swanson issued Hearing Decision 15-UI-40008, affirming the Department's decision. On June 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) 24 Hour Fitness employed claimant as a membership manager from September 21, 2010 to January 3, 2015.

(2) The employer paid claimant approximately \$17.00 per hour, and claimant worked 40 hours per week. The employer also paid claimant commissions that varied between \$200 and \$1,000 per month. Claimant earned an average of \$3,750 per month during 2014.

(3) On December 22, 2014, claimant completed a job interview with a recruiter at National General Insurance for a permanent, full-time inside sales agent position. The recruiter told claimant National General Insurance would hire him for the position on a commission-only basis. Claimant met other employees from National General Insurance who told him the employees at National General Insurance earned at least \$50,000 per year. Claimant understood he would learn the details regarding his pay at an orientation on his first day of work.

(4) Claimant understood he had to pass a background check and drug test before National General Insurance would hire him. On December 23, 2014, claimant discussed his criminal history with the recruiter at National General Insurance, who told claimant that he would pass the criminal background check because he had no felony convictions, and that his first day of employment would be on January 2, 2015. Later on December 23, 2014, claimant told 24 Hour Fitness that he planned to quit on January 3, 2015.

(5) On December 24, 2014, claimant gave National General Insurance the information it required to complete the criminal background check and drug test.

(6) On December 26, 2014, National General Insurance sent claimant an offer letter for the inside sales agent position. Claimant signed the letter, and faxed it back to National General Insurance. The recruiter told claimant he had the job and “was good to go.” Audio Record at 22:01 to 22:08.

(7) On December 31, 2014, National General Insurance rescinded its offer of employment due to the results of claimant’s background check.

(8) Claimant last worked for the employer on January 3, 2015, when he quit work pursuant to his resignation.

(9) Claimant’s weekly benefit amount was \$543.¹

CONCLUSIONS AND REASONS: We agree with 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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). If an individual quits a job to accept an offer of other work, the individual has good cause for leaving only if the offer of work is definite and will begin in the shortest length of time possible under the circumstances. In addition, the new job must pay either 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) (August 3, 2011).

Claimant submitted a letter of resignation on December 23, 2014 stating his last day of work would be January 3, 2015. Claimant completed the criminal background check and drug test on December 24, 2014. Thus, claimant quit work to accept an offer of work that was contingent upon him passing a background check and drug test. Although claimant asserted he would not have resigned his position if he had known National General Insurance could rescind its offer, the issue is not whether claimant was confident he would pass the background check and drug test, or even if he ultimately did, but whether his employment offer was “definite” at the time he quit work. Here, because the employment offer was contingent on the outcome of the background and drug checks and claimant failed to show they had been completed at the time he resigned, claimant did not have good cause to quit work under OAR 471-030-0038(5)(a).

Moreover, even if the offer had been definite, the record fails to show that the job claimant quit work to accept paid an amount equal to or more than the work he left or his weekly benefit amount. A National General Insurance employee told claimant he could expect to earn at least \$50,000 per year. However,

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB 2015-EAB-0766.

the record does not show that amount, or any minimum earnings amount, was part of the offer of work from National General Insurance. We can, however, infer claimant would have earned at least the legal minimum wage.² The minimum wage of \$9.25 per hour totals \$1,603.33 per month for full-time work, which is less than what claimant earned from the work he left. *See* ORS 653.025(2). Minimum wage per week ($\$9.25 \times 40 = \370) is also less than his weekly benefit amount (\$543).

Claimant quit work on January 3, 2015 without good cause. He is disqualified from receiving unemployment insurance benefits until he has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-40008 is affirmed.

J. S. Cromwell and D. P. Hettle, *pro tempore*;
Susan Rossiter, not participating.

DATE of Service: August 12, 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. 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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² State law requires employers to pay all employees no less than minimum wage, unless exempted. ORS 653.025(1). Inside salespersons are not exempt from the minimum hourly wage requirement. *See* ORS 653.020.