

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1081

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110022). Claimant filed a timely request for hearing. On September 9, 2015, ALJ Dorr conducted a hearing and issued Hearing Decision 15-UI-44106, affirming the Department's decision. On September 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) Rainsweet Inc. employed claimant as a laborer from May 29, 2015 to July 6, 2015.

(2) On July 6, 2015, a new employer, FedEx, offered claimant a job to begin on July 13, 2015.

(3) On July 6, 2015, claimant resigned from his job to accept the offer of other work from FedEx. The employer had continuing work available for claimant.

(4) Claimant's sister was disabled and claimant assisted with her care. Although claimant's sister did not normally require care from claimant during claimant's regular work hours, claimant preferred to care for her rather than work until his new job began on July 13, 2015.

(5) On or about July 7, 2015, claimant's sister was hospitalized overnight due to a fall. She required extra care from claimant after she fell and until the hospital released her to return home the next day.

(6) On July 13, 2015, FedEx required claimant to submit to a drug test. Claimant began work for FedEx on July 14, 2015.

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. OAR 471-030-0038(5)(a) (August 3, 2011). 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. *Id.*

Claimant quit work on July 6, 2015 to accept an offer of other work. Claimant expected to begin work for the new employer on July 13, 2015. He did not continue working for the employer until his new job began because he preferred to care for his sister while waiting to begin his new job. However, although claimant's sister was hospitalized and needed more assistance than normal for one day after claimant gave notice, claimant testified that his sister normally "can take care of herself" while he works, and he could have continued working after his sister returned from the hospital. Audio Record at 12:57 to 13:54. Thus, claimant failed to show that, under the circumstances, the new job was to begin within the shortest length of time possible. Moreover, because the employer had claimant take a drug test on July 13, 2015, we infer that claimant's employment offer was contingent on the outcome of the drug test. Because the offer was contingent on the outcome of the drug test, and claimant had not completed it at the time he resigned, claimant's job offer was not "definite" when he resigned.

Thus, because claimant's new job did not begin in the shortest length of time possible under the circumstances, and the offer of work was not definite, claimant did not have good cause to quit. He is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-44106 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: October 7, 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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