

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1396

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 112755). The employer filed a timely request for hearing. On November 16, 2015, ALJ Buckley conducted a hearing, and on November 18, 2015, issued Hearing Decision 15-UI-47833, reversing the administrative decision and concluding that claimant voluntarily left work without good cause. On November 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Cobalt Truck Equipment employed claimant as an on-the-road technician from August 17 to August 29, 2015. The employer paid claimant a wage of \$26 per hour

(2) During his work for the employer, Lane Transit District offered claimant a job as a technician. Lane Transit District offered claimant a starting wage of \$21.50 per hour and benefits. The job offered was expected to continue indefinitely. Claimant accepted the job offer and planned to begin work for Lane Transit District on September 21, 2015.

(3) On August 29, 2015, claimant quit his job with the employer because he had accepted the position with Lane Transit District.

(4) Claimant's weekly benefit amount is \$510.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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). "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). If a claimant leaves work to accept an offer of other work, good cause exists only if the offer is definite, the offered work is to begin in the shortest time reasonable under the circumstances, the offered work is expected to continue and the offered work pays 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). In a voluntary leaving case, claimant carries the burden of persuasion. . *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Claimant quit his job with the employer to accept a position at Lane Transit District. The offer of the new job was definite, expected to continue, and paid more than claimant's weekly benefit amount (though less than the job claimant left). Claimant failed to demonstrate that the new job was to begin in the shortest time reasonable under the circumstances, however. Although claimant testified he left his job with Cobalt Trucking on August 29 to avoid participation in a lengthy out-of-state training program, he presented no evidence or testimony why he could not begin work for Lane Transit District until September 21. Because claimant failed to carry his burden to demonstrate that the work he was offered was to begin in the shortest time reasonable under the circumstances, he did not demonstrate good cause for leaving work to accept an offer of other work under OAR 471-030-0038(4).

Claimant failed to demonstrate good cause for leaving work when he did. Claimant is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-47833 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 5, 2016

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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