

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1398

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121603). Claimant filed a timely request for hearing. On November 6, 2015, ALJ Shoemake conducted a hearing, at which the employer did not appear, and on November 20, 2015 issued Hearing Decision 15-UI-47449, affirming the Department's decision. On November 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he presented new information to "help clarify my situation." Claimant's Written Argument at 1. However, claimant did not explain why he did not offer this information during the hearing or otherwise show, as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond his reasonable control prevented him from doing so. For this reason, EAB did not consider this new information. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Allabira City Tavern employed claimant as a lead line cook for one day, on May 28, 2015.

(2) On May 24 or 25, 2015, claimant discussed a possible job as an executive chef with the general manager of a restaurant called Streetcar Bistro. At that time, the general manager told claimant that he was "going through the process" of relieving the current chef at Streetcar Bistro, and he would like claimant to fill that position if it became available. Audio at ~15:27, ~16:22. The general manager told claimant that the chef position would be full-time, would pay either \$14 per hour or a salary of \$30,000 per year and that he "would shoot" for a starting date of June 8, 2015. Audio at ~15:00. The general manager also stated that he wanted claimant to see Streetcar Bistro's kitchen before he considered taking the position of chef because its condition was going to make the chef job a "challenge." Audio at ~14:40. As a result of this conversation, claimant thought the "percentage was high" that he would be able to take over the chef position at Streetcar Bistro and, although his prospects were "hopeful and promising," they were "not for sure" because there was a possibility that the general manager and the

current chef might work out their differences and the chef's employment might not end. Audio at ~18:46, ~18:48, ~18:54, ~22:56.

(3) On May 26, 2015, the employer offered claimant the position of line cook and told claimant that the cook position would pay \$12.50 per hour and that he would work between 35 and 38 hours each week. Claimant accepted the position because the chef job at Streetcar Bistro was not "confirmed." Audio at ~18:30. Once claimant had accepted the line cook position, the employer told him to report for orientation on May 28, 2015.

(4) On May 28, 2015, claimant attended the employer's orientation. During the orientation, claimant learned that the employer did not expect to open its restaurant until June 15, 2015, and would not be scheduling him for regular work until that day. During a break in the orientation, approximately an hour after it began, claimant spoke with the employer's chef. Claimant asked the chef whether his pay rate would be reviewed after his first 90 days of work. The chef told claimant that the employer did not review any employee's performance for purposes of a pay raise until the employee had been employed for a year. Claimant was displeased at this discovery and told the chef that he "maybe [had] an opportunity coming up to work as a chef for a different employer." Audio at ~9:00, 11:25. The chef told claimant that if the employer's line cook position was not "gonna work for you, [then] it's not gonna work." Audio at ~9:23. Claimant left the orientation and did not return to work.

(5) Sometime after May 28, 2015, the general manager of Streetcar Bistro let its executive chef go. On approximately June 6, 2015, the general manager met with claimant and they "agreed to terms" for his employment at Streetcar Bistro. Audio at ~12:10. Claimant started work at Streetcar Bistro on June 8, 2015.

CONCLUSIONS AND REASONS: 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). A claimant who quits work to accept an offer of other work leaves work for good cause only if, among other things, the offer of new work is "definite." OAR 471-031-0038(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 his employer for an additional period of time.

Claimant contended at hearing that he stopped working for the employer in the middle of orientation because he learned that his wage would not be reviewed until he had worked for one year, because he also learned that that work for the employer started one week later than the prospective chef job at Streetcar Bistro, and because he preferred to start work as soon as possible. Audio at ~8:46, ~9:40, ~22:56. To the extent that claimant quit because he was unhappy with the employer's pay practices and the date on which he would start work, claimant failed to demonstrate he faced a grave situation. Claimant did not contend that he was unaware of what his pay was going to be when he accepted the

employer's job offer on May 26, 2015 or that he was likely to sustain some type of grave harm either if his pay was not raised during his first year of employment or if his paid work did not begin until June 15, 2015. On this record, claimant did not demonstrate that the employer's pay rate or the employer's anticipated start date for his paid work was good cause for him to leave work.

With respect to the job offer from Streetcar Bistro, it makes no sense that if claimant thought this offered job was a certainty that he would have still have accepted the position that the employer offered to him. However, for purposes of this decision, it is accepted that claimant quit work for the employer in anticipation of being offered the job he wanted with Streetcar Bistro. Claimant conceded at hearing that when he quit work with the employer on May 28, 2015, the job with Streetcar Bistro was contingent on the departure of Streetcar Bistro's chef and the job was not "for sure" until the offer was "confirmed" on approximately June 6, 2015. Audio at ~18:30, ~18:46. According to the Department's Unemployment Insurance Benefits Manual, a job offer is "definite" within the meaning of OAR 471-030-0038(5)(a) only if it is "not contingent on anything." Unemployment Benefits Manual (April 2, 2010) at Ch. 442 §A. As well, the Department's position is that rate of pay must be established with certainty before a job offer is considered "definite." Unemployment Benefits Manual (April 2, 2010) at Ch. 442 §A. Here, claimant's rate of pay was not settled definitively at the time he quit work with the employer since it had not yet been determined whether he had selected or agreed upon the wage or salary option, with somewhat different compensation levels. For either or both of these reasons, assuming claimant left work for the job at Streetcar Bistro, that offered job cannot constitute good cause for quitting because it was not "definite" when claimant made his decision to leave.

Since claimant offered no other reasons for leaving work, and none are discernible from the record, claimant failed to show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-47499 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 4, 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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