

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0370**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 92717). Claimant filed a timely request for hearing. On March 23, 2016, ALJ L. Lee conducted a hearing, and on March 29, 2016 issued Hearing Decision 16-UI-55980, affirming the Department's decision. On April 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Roseburg Forest Products Co. employed claimant as a general laborer from April 1, 2013 to February 4, 2016.

(2) On August 31, 2015, claimant injured her knee at work. She was medically restricted from working while she recovered from the injury. She had to wear a knee brace, was prescribed pain medication and underwent physical therapy.

(3) Claimant filed a worker's compensation claim, which the employer's insurance carrier denied. Claimant appealed the denial and planned to attend a hearing on the matter in February 2016.

(4) In January 2016, the employer's insurance carrier offered to settle claimant's worker's compensation claim for \$16,900. In conjunction with the settlement offer, the employer offered an agreement to terminate claimant's employment for an additional \$100. The agreement the employer offered claimant stated, in pertinent part, that claimant's "employment with Company is hereby terminated due to lack of suitable and available work," that she was "leaving employment because of physical limitations to do her regular work," and that the "monetary payments and mutual promises as set forth in the Disputed Claim settlement of [claimant's] workers' compensation represent additional consideration for this agreement." Exhibit 1, Termination Agreement at 1.

(5) At the time the employer and its insurance carrier offered to settle claimant's worker's compensation and end her employment, claimant had been off work for approximately five months. Claimant

considered her work strenuous and physically taxing, and the employer notified claimant that it did not think she was physically capable of doing the work. Claimant's attorney recommended claimant accept the settlement offer, including the agreement to end claimant's employment, and claimant agreed.

(6) On February 4, 2016, claimant accepted the worker's compensation settlement and agreed to end her employment.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude claimant quit work with good cause.

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). The standard 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.

The ALJ concluded that claimant quit work without good cause. The ALJ found as fact that "claimant's attorney offered claimant's departure from employment in exchange for an additional \$100." Hearing Decision 16-UI-55980 at 2. However, the ALJ disregarded claimant's specific testimony that the idea of leaving her job did not originate with her, that it was the employer that did not consider her physically capable of returning to work, and that, prior to entering the agreements, she had planned to return to her position with the employer. Audio recording at ~ 33:35. The record contains no evidence suggesting that the original idea to end claimant's employment came from claimant. Moreover, it appears that the employer's offer of \$100 to end claimant's employment was made in conjunction with and was dependent upon claimant's acceptance of the \$16,900 settlement offer from the employer's insurance carrier. Therefore, the record shows that claimant did not end her employment in exchange for \$100, she ended it for an amalgamated total of \$17,000.

The ALJ also found as fact that claimant quit work for "reasons unknown," which contradicted the ALJ's findings that claimant quit work "in exchange for \$100" because "she found her job physically strenuous," and was contrary to the evidence. Hearing Decision 16-UI-55980 at 1-2. The ALJ opined that "[t]here was no evidence to show the employer was planning to fire claimant or was unwilling to allow her to return to work when she was able." *Id.* at 2-3. That, however, was contradicted by evidence that the employer considered claimant incapable of performing her work and offered to give claimant money in exchange for agreeing not to return to work.

Finally, the ALJ reasoned that claimant had reasonable alternatives to quitting work, including proceeding to the worker's compensation hearing "[i]f she thought her workers' compensation claim had merit" and returning to work when she recovered from her injury, or "simply" returning to work for the employer until she "found a less strenuous job she preferred elsewhere." Hearing Decision 16-UI-55980 at 3. Notably, the ALJ's alternatives does not take into account that the record fails to show whether, or how much merit claimant thought her worker's compensation claim had. The ALJ also failed to take

into account the employer's conclusion that claimant was not physically capable of returning to work at the time claimant agreed to quit, which tends to suggest claimant did not have the alternative of "simply" returning to work at any relevant time. In addition, claimant was not medically released to return to work at the time the agreements were offered to her and the record fails to show that claimant knew or had reason to know that her release was imminent. Moreover, whether claimant could have continued to work or might have sought work elsewhere prior to quitting are immaterial to a good cause analysis. The Oregon Court of Appeals has repeatedly held that continuing to work for the same employer is not a reasonable alternative to quitting because it is true in every case, and does not address the issue presented in a voluntary quit case: whether a reasonable and prudent person would quit work under the conditions the person is experiencing.<sup>1</sup> Nor, the Court has repeatedly held, does "good cause" for quitting work require that an individual seek work prior to quitting.<sup>2</sup>

At the time claimant left work, she had a contested worker's compensation claim pending. She had been unemployed, and without income, for approximately five months. In that context, the employer and its insurance carrier offered her \$17,000 to settle the worker's compensation claim and end her employment. Claimant considered the work she did physically taxing, was notified by the employer that the employer thought she would not be capable of returning to her job, and had not yet been released for work by her physician. Claimant's attorney recommended that she accept the offers. Claimant's only alternative to quitting at that time was to continue on unpaid leave for an indefinite period, facing the prospect of losing the worker's compensation claim and either returning to a job she found physically taxing and that had resulted in a serious injury, or, possibly, being prohibited from returning to the job by the employer based on its conclusion that she was not capable of the work. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued working for the employer under the circumstances.

Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 16-UI-55980 is set aside, as outlined above.

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

**DATE of Service:** April 6, 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](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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<sup>1</sup> *Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011).

<sup>2</sup> See e.g. *Warkentin v. Employment Dep't.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep't.*, 245 Or. App. 573, 263 P.3d 1122 (2011); *Strutz v. Employment Dep't.*, 247 Or. App. 439, 270 P.3d 357 (2011).

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