

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0371

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85006). Claimant filed a timely request for hearing. On March 17, 2016, ALJ Murdock conducted a hearing, and on March 18, 2016 issued Hearing Decision 16-UI-55407, affirming the Department's decision. On April 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Affinity Property Management, LLC employed claimant as a leasing consultant from July 23, 2014 to December 19, 2015.

(2) Claimant worked 40 hours per week and earned \$13.52 per hour. Her unemployment insurance weekly benefit amount was \$327.

(3) On December 2, 2015, claimant received an offer of work from another employer. As of December 4, 2015, claimant had passed all the pre-employment requirements and the offer was definite. The offered work would pay \$18.00 per hour during a 90-day training period and \$16.00 per hour thereafter.

(4) Claimant's new employer originally asked claimant to begin work on December 15, 2015, but claimant asked for a later start date so she could give two weeks' notice to the employer. On December 9, 2015, claimant and her new employer agreed that claimant would begin work on December 28, 2015.

(5) On December 10, 2015, claimant gave the employer two weeks' notice of her intent to quit work. Claimant offered to extend her notice period to December 26, 2015. The employer did not need claimant to extend her notice period, and, instead, accelerated claimant's leaving date to December 19, 2015. The employer paid claimant through December 22, 2015.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that 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). For purposes of OAR 471-030-0038(4), if an individual leaves work to accept an offer of other work, good cause exists if the offer is definite, the work is to begin in the shortest time reasonable under the circumstances, the offered work is reasonably expected to continue, and the pay either exceeds that of the work left or equals or exceeds the individual's weekly benefit amount. OAR 471-030-0038(5)(a).

The ALJ concluded that claimant did not have good cause for quitting work because, although the offer of new work was definite, reasonably expected to continue, and paid more than the work she left and her weekly benefit amount, the new job "was not to begin in a reasonably short time" because claimant could have given less than two weeks' notice to the employer and begun her new job two weeks' earlier. Hearing Decision 16-UI-55407 at 3. The ALJ stated, "given that it was within reason that she give the employer less than two weeks' notice . . . she did not leave work with good cause." *Id.*

We agree with the ALJ that claimant's offer of new work was definite, reasonably expected to continue and paid more than the work she left or her weekly benefit amount. However, we disagree with the ALJ that the work did not begin in the shortest length of time reasonable under the circumstances. The apparent purpose of the requirement that claimant's new work begin in the "shortest time reasonable" is to minimize the length of her unemployment while between jobs, and it is that gap in employment that must be measured in reaching a determination on the issue. Therefore, the relevant time period does not begin with the date the new work was offered, and it is immaterial whether claimant could have given less notice to the employer or might have begun work at her new employer's business on an earlier date had she done so. Rather, to determine whether claimant began her new job in the "shortest time reasonable," the relevant time period must measure from the date she planned to end her previous employment to the date she and her new employer agreed she would begin work.

In this case, claimant planned to end her employment with the employer two weeks after giving notice on December 10, 2015, making her planned quit date December 24, 2015, the Thursday preceding the December 25th national holiday. She offered to extend her leaving date at the employer's discretion, and planned to begin work with her new employer the following Monday, December 28, 2015. We conclude that when an individual has planned to end work with the employer at the end of one work week and begin work with her new employer at the start of the following work week, she has planned to begin the new work in "the shortest time reasonable under the circumstances." Claimant therefore had good cause for quitting work to accept an offer of other work. She is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-55407 is set aside, as outlined above.¹

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

DATE of Service: April 28, 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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.