

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0372

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73400). Claimant filed a timely request for hearing. On March 1, 2016, ALJ Frank conducted a hearing at which the employer failed to appear, and on March 17, 2015 issued Hearing Decision 16-UI-55304, 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) On July 1, 2015, claimant began working full time for \$9.25 per hour as a weekday server at Pacific Way Café.

(2) On July 18, 2015, claimant began working 10 to 12 hours per week as a part time weekend morning hostess for Steven Martin Management Co. (the employer). The employer paid claimant \$10.75 per hour. Claimant was willing to work two jobs during the summer to try to secure full time, year-round employment.

(3) On August 30, 2015, Pacific Way Café promised claimant it would transfer her to a baker position and continue to provide her 40 hours of work per week even if business declined after the busy summer coastal season ended.

(4) On August 31, 2015, claimant gave the employer notice that she would leave work on September 12, 2015 to continue working full time for Pacific Way Café.

(5) On September 12, 2015, claimant left work with the employer to continue working full time for Pacific Way Café because Pacific Way Café promised to continue her employment even if business declined in the fall.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left 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.

OAR 471-030-0038(5)(a) provides, in pertinent part, that for purposes of applying OAR 471-030-0038(4), an individual who leaves work to accept an offer of other work has good cause for leaving if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the work pays more than the weekly benefit amount or the work left, and the work is reasonably expected to continue.

In Hearing Decision 16-UI-55304, the ALJ determined that claimant left work to accept an offer of other work from Pacific Way Café and that her testimony was “inconsistent” about the likelihood that work would continue with Pacific Way Café after the summer months. First, we disagree that claimant’s testimony was inconsistent. Claimant testified consistently throughout the hearing that both the employer and Pacific Way Café had seasonal businesses, but that on August 30, 2015, Pacific Way Café offered her guaranteed full time work even if business declined in the fall. Second, we disagree that claimant left work to accept an offer of other work where the record shows claimant left work with the employer, not to accept an offer of other work, but because the expected duration of her job with Pacific Way Café had changed. *See* Audio Record at 7:14 to 10:04. Rather than continuing her seasonal employment, Pacific Way Café offered to continue claimant’s full time work even after the coastal busy season ended. Claimant initially took the job with the employer because she was trying to secure work with guaranteed hours that would continue year-round. Once Pacific Way Café gave claimant such a guarantee, claimant understandably gave priority to that job, and quit her job with the employer. We therefore conclude that, under OAR 471-030-0038(4)(a), claimant showed by the preponderance of the evidence that no reasonable and prudent person would have continued to work for her part time, seasonal employer for an additional period of time.

Even assuming, *arguendo*, that claimant left work for other work and that OAR 471-030-0038(5)(a) applies to this case, we disagree that claimant failed to show good cause to quit under that rule. The ALJ concluded, and we agree, that the offer of work from Pacific Way Café was a definite offer¹ because it included terms that showed a mutual understanding between claimant and Pacific Way Café such as the pay rate, position, start date, and duration of the job. However, the ALJ also concluded that the work with Pacific Way Café did not pay more than her weekly benefit amount and was seasonable and not reasonably expected to continue. Although the ALJ did not assess if the work with Pacific Way Café paid more than the work claimant left, we conclude that it did because claimant earned \$370 per week at Pacific Way Café compared to \$129 per week working part time for the employer. The work was reasonably expected to continue because, although Pacific Way Café experienced seasonal

¹ Hearing Decision 16-UI-55304 at 2.

fluctuations in business, it promised to continue to give claimant full time work even after its busy season ended. Moreover, although the ALJ did not consider whether the work began in the shortest length of time as can be deemed reasonable under the circumstances, we conclude that it did because claimant was already working for Pacific Way Café, and would continue to do so, when she notified the employer she was quitting.

For these reasons, we conclude that claimant had good cause for quitting work with the employer. Claimant is not disqualified from receiving unemployment benefits because of this work separation.

DECISION: Hearing Decision 16-UI-55304 is set aside, as outlined above.²

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

DATE of Service: May 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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² 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.