

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0426

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82328). Claimant filed a timely request for hearing. On March 25, 2016, ALJ S. Lee conducted a hearing, and on April 1, 2016 issued Hearing Decision 16-UI-56378, affirming the Department's decision. On April 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Residence Inn by Marriott, LLC employed claimant as a laundry worker from April 1, 2014 to October 9, 2015.

(2) Claimant experienced back pain while performing his work and did not want to work Sundays so he could attend church. He did not complain to the employer for cultural reasons. He believed his pain was related to performing physical labor at his age and concluded he needed to find less strenuous work.

(3) Claimant sought work from an employer called Salon Centric that he thought would be less strenuous on his back. Claimant believed he would be hired, and, on October 6, 2015, notified the employer that he was quitting work. Claimant's resignation became effective on October 9, 2015.

(4) On October 19, 2016, claimant received a job offer from Salon Centric. The job was scheduled to begin on October 26, 2015.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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). An individual who quits work to accept an offer of other work has quit work with good cause only if the offer is definite and the new work is scheduled to begin in the shortest time reasonable under the circumstances. OAR 471-030-0038(5)(a). 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 his employer for an additional period of time.¹

Claimant quit work primarily because he believed he would be offered a job with Salon Centric that he believed would be less strenuous and cause him to experience less back pain. It does not appear on this record that claimant would have quit work because of his back pain or work schedule if he had not believed he was going to receive an offer of other work after quitting. However, in order to show good cause for quitting work to accept an offer of other work, the offer of new work must be definite at the time he quit, and the new job must begin in the shortest time reasonable after claimant's existing job ended. In this case, claimant quit work on October 9, 2015, but was not offered a job until approximately 10 days later, on October 19, 2015. Therefore, the job offer was not definite at the time claimant quit. The new job also did not begin in the shortest period reasonable under the circumstances. The new job began approximately 17 days after claimant's job with the employer ended. Claimant did not assert or show that it was necessary for him to have 17 days between jobs. Therefore, on this record, it appears that the new job did not begin in the shortest time reasonable after claimant's job with the employer ended.

Claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-56378 is affirmed.

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

DATE of Service: May 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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¹ We applied the standard of a reasonable and prudent person without impairment when reaching this decision. Although claimant testified that he had some physical difficulties, he did not establish by a preponderance of the evidence that they constituted permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h).