

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0696

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed without good cause to apply for work to which he was referred by the Department (decision # 162420). Claimant filed a timely request for hearing. On May 18, 2016, ALJ Frank conducted a hearing, and on May 26, 2016 issued Hearing Decision 16-UI-60486, affirming the Department's decision. On June 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Beginning in approximately 2012, claimant worked seasonally for the federal Bureau of Land Management (BLM) during the summer. Claimant anticipated that BLM was going to offer him seasonal work in 2016 and that, weather permitting, the work would begin sometime in approximately late April to early May 2016.

(2) Sometime before March 7, 2016, claimant filed a claim for unemployment benefits and the claim was determined valid. Among other jobs, claimant sought work as landscaper and groundskeeper. Claimant's labor market included Newport, Oregon.

(3) On approximately Friday, March 4, 2016, claimant received a letter from the Employment Department referring him to an available landscaping job in Newport. The landscaping work was temporary, and expected to last only approximately 30 days. It paid \$15.61 per hour, which was more than the average rate of pay prevailing for landscaping work in claimant's labor market. Based on its location, pay, the type of work claimant was seeking and claimant's five years' experience in landscaping, the Department determined the available job was suitable for claimant. The letter did not identify the potential employer, which was BlueSun, Inc.

(4) On approximately Monday, March 6, 2016, claimant reported to the local WorkSource Oregon office to follow up on this referral. Claimant was given information about how to apply for the job online, although the WorkSource staff did not tell him the identity of the potential employer. Claimant told the

WorkSource staff that he did not want to take a “very temporary job” like that to which he was being referred because he did not want to jeopardize his prospects of working another season work with BLM during summer 2016. Audio at ~15:00. Claimant did not apply for the job with BlueSun.

CONCLUSIONS AND REASONS: Claimant failed without good cause to apply for suitable work when referred by the Department.

ORS 657.176(2) provides in part that an individual is disqualified from receiving benefits if the individual refused without good cause to apply for suitable work when referred by the Department. ORS 657.190(1) sets out the factors to be considered in determining whether work is suitable for an individual, including the individual’s customary occupation, the individual’s prior training and experience, the location of the work and the pay associated with the work. ORS 657.195(1)(b) provides that work is not considered suitable if the remuneration the individual will receive for it is substantially less favorable than those prevailing for similar work in the locality, and OAR 471-030-0037(1) (August 1, 2004) states that pay is considered “substantially less favorable” if it is at least ten percent lower than the average rate of pay for similar work in the locality. OAR 471-030-9938(6) (August 3, 2011) states that “good cause” for purposes of refusing to apply for suitable work is such that a reasonable and prudent person, exercising ordinary common sense would refuse that work when referred by the Department. Claimant has the burden to establish that the landscaping work to which he was referred was unsuitable or there was otherwise good cause for his failing to apply for that work. *Vail v. Employment Division*, 30 Or App 365, 567 P2d 129 (1977).

When claimant received the Department’s March 4, 2016 letter it expressly notified him of what the Department considered a suitable job opportunity even if it did not identify the name of the potential employer. Claimant did not dispute the suitability of the available work, nothing elicited at hearing suggested that it was unsuitable, and applying the factors set out in ORS 657.190, ORS 657.195 and OAR 471-030-0037, it appeared to satisfy all requirements for suitability. While claimant might not have been known the identity of the potential employer when he visited the WorkSource office, or may have lacked some of the particulars about the job, the statement he made to the WorkSource staff was a flat refusal to apply for the job regardless of that information. By his actions, claimant refused to apply for a suitable work to which the Department referred him.

Claimant’s refusal to apply for the landscaping work with BlueSun was not for good cause. While claimant justified his refusal on the anticipation of being offered a job with BLM, it does not appear that the BLM job had been offered to claimant at that time or that it was more than simply expected. Audio at ~16:27. As well, claimant did not dispute that the temporary job with BlueSun was expected to end before the time he expected the BLM job to commence if it was offered to him. It does not appear reasonable for claimant to have assumed, as he said he did, that if he took the BlueSun job it would interfere with his ability to return to seasonal work with the BLM. Finally, claimant did not offer an explanation for why, if the length of the BlueSun work extended into the time when BLM expected him to work, he could not have quit the BlueSun job to take the BLM job. Audio at ~16:23. On these facts, a reasonable and prudent person would not have refused to apply for the BlueSun job based the expectancy of being offered a job with BLM, particularly when it was likely the BlueSun job would not conflict with the BLM job if he was offered it.

Claimant did not show good cause for refusing to apply for suitable work when referred by the Department. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-60486 is affirmed.

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

DATE of Service: July 22, 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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