

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0798

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 194541). Claimant filed a timely request for hearing. On June 27, 2016, ALJ Vincent conducted a hearing, and on July 1, 2016, issued Hearing Decision 16-UI-62957, affirming the administrative decision. On July 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument to the extent it was relevant and based on evidence in the record.

EVIDENTIARY MATTER: At the June 27, 2016 hearing, the ALJ admitted a documents submitted by claimant into the record as Exhibit 1. On this record, however, the exhibit was not marked. Exhibit 1 consists of a copy of claimant's October 15, 2015 pay stub from Timber Tomorrow.

FINDINGS OF FACT: (1) Claimant worked for Gahlsdorf Logging as an operator from October 1 through 6, 2015. The employer paid claimant \$25 per hour and claimant worked 40 hours per week.

(2) Claimant accepted a position as an operator with a former employer, Timber Tomorrow; he expected this work to last indefinitely. Claimant began work for Timber Tomorrow on Monday, October 12, 2015. Audio at 12:44, 12:59. Timber tomorrow paid claimant \$22 per hour and claimant worked 40 hours per week.

(3) Claimant's weekly benefit amount was \$527.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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). A claimant who leaves work to accept an offer of employment has good cause for quitting his job “only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances.” OAR 471-030-0038(5)(a). In addition, the new job must pay more than the work the claimant left, or “an amount equal to or in excess of the weekly benefit amount.” OAR 471-020-0038(5)a)(A) and (B).

Here, the record shows that claimant left his job with Gahlsdorf Logging to accept a position with Timber Tomorrow. The work was expected to last indefinitely, and began in the shortest length of time that was reasonable: claimant started his new job on less than a week after he quit his job with Gahlsdorf Logging. Audio at 12:59. The ALJ found that claimant did not have good cause to leave Gahlsdorf Logging, however, because he concluded that the new job with Timber Tomorrow did not pay more than the work claimant left. The ALJ was incorrect in this conclusion. The pay for the new position must be either more than the work left *or* more than the individual's weekly benefit amount. Here, claimant earned \$22 per hour working for Timber Tomorrow and worked 40 hours per week: $40 \times \$22 = \880 per week, which is more than claimant’s weekly benefit amount of \$527. Claimant therefore demonstrated good cause for leaving his job with Gahlsdorf Logging under OAR 471-030-0038(5).

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-62957 is set aside, as outlined above.

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

DATE of Service: August 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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