

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0800

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143123). Claimant filed a timely request for hearing. On June 14, 2016, ALJ M. Davis conducted a hearing, and on June 22, 2016 issued Hearing Decision 16-UI-62284, affirming the Department's decision. On July 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Employer's Overload, a temporary staffing or employee leasing agency, employed claimant on March 23, 2016. The employer assigned claimant to work as a dishwasher for its client, Chaucer Foods.

(2) On March 24, 2016, the employer notified claimant that his assignment at Chaucer Foods would last more than one day. Claimant had previously thought the Chaucer Foods assignment was only going to be for one day. He told the employer he did not want to continue with Chaucer Foods because it was his birthday and because he wanted to find a higher paying job.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship is deemed severed at the time that a work assignment ends. OAR 471-030-0038(1)(a).

Claimant could have continued to work for the employer at the Chaucer Foods assignment and chose not to do so, making his separation from that assignment a voluntary leaving. For purposes of unemployment insurance benefits, claimant's decision to quit the Chaucer Foods assignment is deemed to have severed the employment relationship between claimant and the employer, even if claimant

remained registered with the employer for other assignments. The work separation was, therefore, a voluntary leaving, effective March 24, 2016, the day claimant voluntarily left his the temporary assignment.

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). 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.

To the extent claimant quit the temporary assignment because he believed it was only a one-day assignment or because it was his birthday, claimant did not show good cause for quitting work. Claimant learned on March 24th that the assignment was going to last more than one day, and did not establish that prolonging the assignment was a grave situation for him, or that grave reasons prevented him from accepting it. As it was described at the hearing, no reasonable and prudent person would consider continuing in this temporary assignment a situation so grave that it left the person no reasonable alternative but to quit work.

To the extent claimant quit the temporary assignment because he wanted to find higher paying work, claimant also quit work without good cause. OAR 471-030-0038(5)(b)(A) provides that an individual who leaves suitable work to seek other work has left work without good cause. Because this record fails to show any reason why the temporary dishwashing assignment at Chaucer Foods was not suitable for claimant in consideration of suitability factors such as those listed in ORS 657.190 and ORS 657.195, he did not have good cause to leave that work to seek other work.¹

Claimant did not show that he quit work with good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-62284 is affirmed.

¹ ORS 657.190 Suitable work; factors to consider. In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.

ORS 657.195 Suitable work; exceptions. (1) Notwithstanding any other provisions of this chapter, no work is deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (a) If the position offered is vacant due directly to a strike, lockout or other labor dispute.
 - (b) If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
 - (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (2) On and after November 8, 1938, and for the purposes of this chapter only, this section shall have the same meaning as the provisions of section 3304(a)(5) of the Internal Revenue Code.

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

DATE of Service: August 2, 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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