

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0802

Reversed
Disqualification

PROCEDURAL HISTORY: On June 10, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant refused an offer of work without good cause (decision # 70852). Claimant filed a timely request for hearing. On June 29, 2016, ALJ Triana conducted a hearing, and on July 5, 2016 issued Hearing Decision 16-UI-63111, concluding claimant had good cause to refuse the job offer. On July 7, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 11, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant's labor market included the Vancouver, Washington area. The Department's adjudicating department determined that median rate of pay prevailing for production laborer work in claimant's labor market was \$12.36 per hour.

(3) Claimant performed work in approximately six general production or industrial laborer assignments through Madden Industrial Craftsmen, Inc. since October 2014. Her hourly wage has ranged between \$10.00 per hour and \$14.00 per hour, and depended on the nature of the assignment and how difficult the work was to perform.

(4) On September 15, 2015, claimant worked through Madden at a rate of \$10.75 per hour. Between November 2015 and April 2016, claimant's hourly rate of pay wage was \$13.00 to \$14.00 per hour.

(5) On May 20, 2016, Madden Industrial Craftsmen, Inc. offered claimant work with one of its clients as a production laborer. Claimant had not performed work for that particular client in the past. The job was temp-to-hire, full time, and paid \$12.00 per hour. It was substantially less physical and less difficult than claimant's previous assignment. The work was located in Vancouver, Washington.

(6) Claimant felt that the offer was a demotion because it paid less than her previous assignment. She refused the employer's offer of work because she wanted to make more than \$12.00 per hour.¹

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant refused an offer of work without good cause.

ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if claimant failed without good cause to accept suitable work when offered. OAR 471-030-0038(6) (August 3, 2011) provides that "good cause is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to accept suitable work when offered by the employer. The ALJ concluded that claimant refused the offer of work with good cause because it paid \$12.00 per hour and the Department "would not consider \$12 per hour a suitable rate of pay given her prior rates of pay." Hearing Decision 16-UI-63111 at 3. Although we agree with the ALJ that the Department's witness testified consistent with the ALJ's findings, we disagree with the ALJ's conclusion.

ORS 657.190 provides that an individual's prior earnings are a factor to consider when determining whether or not work is "suitable." ORS 657.195(1)(b) specifies that work is not suitable if the remuneration is substantially less favorable to the individual than those prevailing for similar work in the locality. OAR 471-030-0037(2) provides:

In applying the provisions of ORS 657.176(2)(e), and for the purposes of 657.195(1)(b), if inadequate rate of pay was one of the reasons for refusing to accept new work, the work is not suitable if the rate of pay is substantially less favorable than the rate of pay prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the median rate of pay for similar work in the locality. The median rate of pay prevailing in the locality shall be determined by employees of the Employment Department adjudicating office using research data compiled by the department.

In this case, the rate of pay for the production work offered to claimant on May 20, 2016 was \$12.00 per hour. The median rate of pay for similar work in the locality was \$12.36 per hour. The rate of pay for the work offered to claimant is substantially less favorable only if it is "at least ten percent lower than" \$12.36. Ten percent of \$12.36 is \$1.23. Therefore, the rate of pay for the work claimant was offered would not be considered "substantially less favorable," and, therefore, would not be considered unsuitable, unless it paid \$11.13 or less per hour. The work the employer offered to claimant paid \$12.00 per hour. It was not substantially less favorable than the rate of pay prevailing in the locality, and was not unsuitable based on the remuneration.

Notably, claimant was not being asked to perform the same work she had previously performed for \$14.00 for a lesser rate of pay. Although claimant had, recently, earned \$14.00 per hour working for one of Madden's other clients, the offered work was substantially less difficult and physical than claimant's previous assignment and was for a different client for which claimant had never before worked. The rate of pay was not outside the range of pay claimant had earned during the eight-month

¹ Claimant refused a subsequent offer of work from the employer on May 27, 2016 because she had a potential job offer from a restaurant. Those events all occurred approximately a week after the events material to this job offer had passed, and, therefore, are not relevant to his job refusal.

period immediately preceding the job offer at issue in this case. Generally speaking, a reasonable and prudent person, exercising ordinary common sense, would not expect to earn the same rate of pay she had earned for difficult and physical work when performing less difficult, less physical work, and, on these facts, would not refuse to accept the employer's May 20th job offer.

For the reasons explained, we conclude that claimant refused an offer of work without good cause. She is, therefore, disqualified from receiving unemployment insurance benefits because of this job refusal until she has re-qualified for benefits.

DECISION: Hearing Decision 16-UI-63111 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, 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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