

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0872

Reversed
Disqualification

PROCEDURAL HISTORY: On April 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80919). Claimant filed a timely request for hearing. On May 5, 2016, ALJ Messecar conducted a hearing at which the employer failed to appear, and on May 12, 2016, issued Hearing Decision 16-UI-59422, affirming the Department's decision. On May 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On June 23, 2016, EAB issued Appeals Board Decision 2016-EAB-0581, reversing Hearing Decision 16-UI-59422 and remanding this matter for further development of the record. ALJ M. Davis reviewed the record from the May 5, 2016 hearing, and on July 12, 2016, conducted a hearing, at which claimant and the employer appeared, and on July 19, 2016 issued Hearing Decision 16-UI-64007, concluding claimant voluntarily quit work with good cause. On July 25, 2016, the employer filed an application for review with EAB. EAB considered the entire hearing record.

FINDINGS OF FACT: (1) Rogue Valley Periodontics and Implant employed claimant from January 29, 2016 to February 29, 2016 as a dental assistant.

(2) Claimant worked 36 to 40 hours per week for the employer, Monday through Thursday, for a pay rate of \$20 per hour.

(3) On Friday, February 26, 2016, claimant met with the owner of ADC Dental and discussed the terms of a dental assistant opening at ADC Dental. The owner told claimant she would like to offer claimant the dental assistant position and asked claimant to participate in a "working interview" on March 1, 2016, to verify that claimant was able to perform the duties of her job. Claimant agreed to do the "working interview" on March 1, 2016.

(4) Claimant was scheduled to work for the employer on February 29, 2016, but did not report to work. When the employer's staff was unable to contact claimant, one of the employees asked her husband, a police officer, to go to claimant's home to check on her. Claimant was at home and told the officer that she did not report to work that day because she found other work because she believed the employer was

discharging her. The officer reported the information to the employer. Claimant did not return to work with the employer.

(5) On Tuesday, March 1, 2016, claimant worked eight hours for ADC Dental and was paid for the time. After claimant completed the work on March 1, the owner at ADC Dental told claimant she was satisfied with claimant's work performance and had claimant complete new hire paperwork.

(6) On March 2 and 3, 2016, claimant reported to work with ADC Dental to become familiar with and organize the areas where she would work in two of ADC Dental's offices.

(7) Claimant had a weekly benefit amount of \$248.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

OAR 471-030-0038(5)(a) provides that for purposes of applying OAR 471-030-0038(4), an individual who leaves work to accept an offer of other work has good cause for leaving if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the work pays more than the weekly benefit amount or the work left, and the work is reasonably expected to continue.

In Hearing Decision 16-UI-64007, the ALJ determined that claimant had good cause to leave work with the employer to accept an offer of other work from ADC Dental pursuant to OAR 471-030-0038(5) because the new work was to begin in within a reasonable period of time, paid more than claimant's weekly benefit amount, and "no evidence was presented to establish that claimant did not expect the work to continue indefinitely."¹ The ALJ did not address if the offer was definite.

We agree with the ALJ that the work with ADC Dental began in the shortest length of time reasonable under the circumstances and paid more than claimant's weekly benefit amount. However, we disagree that claimant had good cause to quit when she did because, when claimant quit work with the employer, she did not yet have a definite offer of other work that was reasonably expected to continue. Claimant testified that she decided on February 26, 2016, after meeting with ADC Dental, that she would not return to work with the employer. Claimant did not report to work for her scheduled shift on February 29, and told a police officer that day that she had left work because she found new employment. Although claimant asserted that ADC Dental offered her a position as a dental assistant when claimant

¹ Hearing Decision 16-UI-64007 at 2.

first met with its owner on February 26, the record shows that the only definite offer of work before claimant quit work on February 26 was the offer for claimant to complete the “working interview,” a one-day work assignment. Audio Record (July 12, 2016) at 14:02 to 14:09. Because the “working interview” was to last one day, the record does not show that the work ADC Dental offered to claimant before she quit working for the employer was reasonably expected to continue. Claimant testified that the purpose of the “working interview” was for the owner to “make sure everything flowed good,” to ensure that claimant “knew what [she] was doing,” and to “see [claimant] in action.” Audio Record (July 12, 2016) at 15:42 to 16:37. Claimant testified that, after claimant completed the one-day “working interview” on March 1, the owner “offered [claimant] the position and had [claimant] fill out new hire paperwork.” Audio Record (July 12, 2016) at 14:48 to 14:55. The record shows that ADC Dental did not make the offer of work for permanent employment until after the owner saw and was satisfied with claimant’s work on March 1. Thus, because the offer for permanent employment was not assured, but, rather, was contingent on a successful “working interview,” it was not a definite offer at the time claimant quit her job with the employer.

Therefore, we conclude that claimant quit work without good cause. Claimant does not qualify to receive unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 16-UI-64007 is set aside, as outlined above.

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

DATE of Service: August 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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