

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1095

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142829). Claimant filed a timely request for hearing. On September 14, 2016, ALJ S. Lee conducted a hearing, and on September 20, 2016 issued Hearing Decision 16-UI-67772, affirming the Department's decision. On September 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Spirit Mountain Gaming, Inc. employed claimant from June 27, 2000 to June 12, 2016.

(2) Claimant worked for the employer as a cage cashier. She earned \$15.96 per hour and worked 40 hours per week. Her weekly gross earnings totaled \$638.40. Claimant and her family had concerns about the length of claimant's commute to and from work, and her work schedule.

(3) On June 10, 2016, claimant received an offer of work as an intake call specialist from Zumatel. The offer was for full time work that paid \$11.00 per hour, with weekly gross earnings of \$440, although Zumatel would pay her a reduced wage of \$10.00 per hour during a two week training period. The work was scheduled to begin on June 14, 2016 and continue indefinitely.

(4) Zumatel was located within walking distance of claimant's residence and claimant thought her work schedule at Zumatel would be better for her family. Claimant decided to accept the job offer, and quit her job with the employer. Effective June 12, 2016, claimant quit work with the employer.

(5) Claimant's weekly benefit amount was \$416.00.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant quit work with 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) (August 3, 2011). 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. For purposes of OAR 471-030-0038(4), if an individual leaves a job to accept an offer of other work, the individual has good cause if the offer is definite, the work is to begin in the shortest length of time reasonable under the circumstances, the work is reasonably expected to continue, and the new work pays either a greater amount than the work left or equal to or greater than the individual’s weekly benefit amount. OAR 471-030-0038(5)(a).

The ALJ concluded that claimant quit work without good cause because although her offer of work with Zumatel was definite, was to begin in the shortest period of time possible and was reasonably expected to continue, the new work paid less than her job with the employer and less than her weekly benefit amount. In support, the ALJ reasoned that although claimant had “the potential to earn more [than \$10.00 per hour] in the future,” “it was not guaranteed,” and, since claimant’s offer of full time work for \$10.00 per hour (\$400 per week) paid less than claimant’s weekly benefit amount and weekly earnings from the employer, claimant did not show good cause to leave her job with the employer under OAR 471-030-0038(5)(a). Hearing Decision 16-UI-67772 at 1, 3. We agree with the ALJ that claimant’s offer of work with Zumatel was definite, to begin in the shortest period of time possible, and was reasonably expected to continue, but disagree with the ALJ’s as to what the new work was going to pay.

Claimant testified with respect to her Zumatel’s offered earnings, “I started out at \$10.00 an hour and was promised after my two weeks of training \$11.00 an hour.” Audio recording at ~ 9:15-10:00. Although the record fails to show that Zumatel “guaranteed” claimant \$11.00 per hour, Zumatel did “promise” her the higher hourly wage. “Promise,” in common usage, means “a statement telling someone that you will definitely do something or that something will definitely happen in the future . . . a reason to expect that something will happen in the future” or “a legally binding declaration that gives the person to whom it is made a right to expect or to claim the performance . . . of a specified act.”¹ It therefore makes no difference to this analysis that claimant was “promised” but not “guaranteed” the higher hourly wage. The payment of the \$11.00 per hour wage was more than just a “potential” increase, it was a certainty that claimant had a right to rely upon, and, although claimant was initially to earn \$10.00 per hour, she did not decide to leave long-term employment with the employer to accept two weeks of work that paid \$10.00 per hour, she left to accept an indefinite period of work, reasonably expected to continue, that, as offered, promised to pay \$11.00 per hour. Claimant therefore left work with the employer to accept an offer of work that paid \$11.00 per hour.

The offered work was expected to pay \$440 per week (\$11.00/hour x 40 hours/week), which was less than claimant’s work with the employer paid, but exceeded claimant’s \$416 weekly benefit amount. Because claimant left work to accept an offer of other work that paid more than her weekly benefit

¹ <http://www.merriam-webster.com/dictionary/promise>

amount, claimant quit work with good cause under OAR 471-030-0038(5)(a). She is, therefore, not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-67772 is set aside, as outlined above.²

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

DATE of Service: October 14, 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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² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.