

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1433

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 124730). The employer filed a timely request for hearing. On December 13, 2016, ALJ Vincent conducted a hearing at which claimant failed to appear, and on December 16, 2016 issued Hearing Decision 16-UI-73053, reversing the Department's decision and concluding claimant voluntarily left work without good cause. On December 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he stated that he did not appear at the hearing because he had two matters scheduled with the Department on December 13, 2016, "mixed up the two times" and called in for the hearing when it was already over. EAB construes claimant's explanation as a request that he be allowed to present additional information under OAR 471-041-0090 (October 29, 2006), which authorizes EAB to consider additional information if the party offering it shows that factors or circumstances beyond its reasonable control prevented the party from offering the information at the hearing. In support of his request, claimant contended only that he "mixed up" the times without any supporting information about how the mix-up happened. Avoiding human error such as confusion about the time for which a hearing is scheduled is generally considered a matter within a party's reasonable control unless other factors supervened. Absent supporting details, EAB has no basis for concluding that the mix-up alleged by claimant constituted a factor or circumstance beyond claimant's reasonable control. Claimant's request to have EAB consider additional information is therefore denied.

FINDINGS OF FACT: (1) Resource Staffing Services, Inc. employed claimant from February 25, 2015 until September 23, 2016. The employer assigned claimant to perform services for its client, Parts Channel.

(2) On September 23, 2016, claimant notified the employer he was leaving work effective that day to accept a permanent position that Parts Channel had offered to him.

(3) Also on September 23, 2016, after claimant gave his notice to the employer, Parts Channel informed the employer that claimant had failed a pre-employment drug test that was a condition of his hire. Parts Channel did not hire claimant.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). If a claimant leaves work to accept other work, good cause exists only if, among other things, the offer of other work is definite. OAR 471-030-0038(5)(a) (August 3, 2011). The standard for showing good cause 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.

Although claimant did not appear at the hearing, the testimony from the employer was that claimant notified the employer that he was leaving work to accept an offer of permanent work from Parts Channel. Audio at ~9:40. After claimant notified the employer that he was leaving, Parts Channel informed the employer that it was not going to hire claimant because he had failed a pre-employment drug test. Audio at ~13:02. It appears that the offer of new work that Parts Channel made to claimant was contingent on his taking and passing a drug test. According to the Department's Unemployment Insurance Benefits Manual, a job offer is "definite" within the meaning of OAR 471-030-0038(5)(a) only if it is "not contingent on anything" at the time claimant left work. Unemployment Insurance Benefits Manual (April 2, 2010) at Ch. 442 §A; *see also Appeals Board Decision 2016-EAB-0252* (April 4, 2016) (any contingency to becoming employed in the new work makes the offered work not definite for purposes of OAR 471-030-0038(5)(a)). Because the work offered to claimant by Parts Channel was conditioned on his passing the drug test, and the record shows that claimant quit before the results of the drug test were known, there was insufficient evidence to show claimant had good cause for leaving work with the employer when he did to accept the new work with Parts Channel.

Claimant did not have good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-73053 is affirmed.

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

DATE of Service: January 23, 2017

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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