

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0064

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 132003). The employer filed a timely request for hearing. On December 23, 2014, ALJ Triana conducted a hearing, and on December 29, 2016 issued Hearing Decision 16-UI-73767, reversing the Department's decision. On January 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he offered new information in the form of a job posting on the employer's website from February 7, 2017, allegedly for the position that claimant left on August 17, 2016. While we accept the job posting was not available at the time of the December 23, 2016 hearing, and the advertised job paid less per hour and had fewer scheduled hours than the job that claimant had for the employer, it is not clear that the posting was for the identical position that claimant held or that it required the same credentials and experience required for the position that claimant previously held. In addition, the fact that the employer advertised the job for a lesser compensation than claimant received is not sufficient, in and of itself, to rebut the employer's contention at hearing that it would not have reduced the compensation for claimant's job so long as claimant held that position. Audio at ~38:12, ~39:03. For these reasons, we did not consider the job posting that claimant offered when reaching this decision. *See OAR 471-041-0090(2)* (October 29, 2006) (EAB may consider new information only if it is relevant and material to EAB's determination, and circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing).

FINDINGS OF FACT: (1) Clackamas County School District #3 employed claimant as a career and education counselor in a high school from September 2, 2014 until August 17, 2016. Claimant's position was funded through a grant to the employer under the Workforce Investment and Opportunity Act.

(2) Claimant earned \$20 per hour in his position and worked 40 hours per week on a year-round basis, for an income of approximately \$800 per week or \$3,200 per month. Claimant incurred commuting costs of approximately \$25 per week or \$100 per month. Claimant did not incur any other expenses to work. Claimant paid \$1,200 per month in rent, and his lease was scheduled to terminate on July 1, 2016.

(3) In approximately April or May 2016, the principal of the school where claimant worked spoke to claimant about the school's budget for the upcoming fiscal year, running from July 1, 2016 through June 30, 2017. The principal cautioned claimant about his expenditures because the rate of pay or the hours for his position "might possibly" be reduced in the upcoming budget and the employer "may be cutting back on [his] work a bit.". Audio at ~24:41, ~25:14; *see also* at ~10:46, ~25:00. The principal did not provide any more specific information to claimant about whether his hours or his compensation would decrease and, if so, by how much. At that time, the employer had not made any decisions about the rate of pay or the hours that would be budgeted for claimant's position. Around this time, claimant learned that if he renewed the lease on his house, his monthly rent would increase \$400 per month, to \$1,600 per month.

(4) After the conversation with the principal, claimant concluded he could not continue working for the employer if his compensation were reduced because he would be unable to pay his living expenses and his debt obligations. Claimant decided he needed to quit work with the employer to devote himself to looking for other work with better pay than he thought he would receive from the employer. Claimant spoke with the principal about leaving work and an appropriate date for his last day of work.

(5) On June 21, 2016, claimant submitted a written resignation to the employer stating that his last day would be August 17, 2016. As of that time, the employer had decided not to reduce claimant's hours or the rate of pay for his position in the upcoming fiscal year if he remained on the job, and would have made up any shortfall in grant funding for claimant's position from other sources.

(6) On July 19, 2016, claimant was offered a position with a school district in Hawaii to fill in for teachers who were on sabbaticals. The position was scheduled to start on October 3, 2016, would be of indefinite duration and year round, would pay over \$26 per hour and would be full-time. That day, claimant accepted the offer from the school district in Hawaii. The offer of employment from the school district in Hawaii was contingent on claimant passing its background check.

(7) On August 17, 2016, claimant voluntarily left work. At that time, the school district in Hawaii had not yet performed a background check on claimant.

(8) On approximately September 1, 2016, claimant moved to Hawaii. Once in Hawaii, claimant performed tasks necessary to establishing himself in that state. The school district in Hawaii conducted its background check of claimant sometime in mid-September 2016. Later, the school district in Hawaii delayed claimant's start of work from October 3, 2016 until the end of November 2016, and then delayed it again until mid-January 2017.

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). “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). Leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). If a claimant leaves work to accept other work, good cause exists only if, among other things, the offer of new work is definite and is to begin in the shortest period of time deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a). 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.

This is a somewhat unusual case. When claimant submitted his resignation notice to the employer on June 21, 2016 he did so before the school district in Hawaii had offered him a job and, when he actually left work on August 17, 2016, he apparently did so to move to Hawaii for purposes of accepting the job with the school district in Hawaii. In voluntary leaving cases involving facts admittedly dissimilar to those in this one, the Court of Appeals has stated that when new facts have intervened between when claimant notified the employer he planned to resign and when claimant actually left work “the appropriate time to evaluate whether claimant had good cause [for leaving work] was not when claimant provided [] notice [of claimant’s resignation to the employer], but when [claimant] actually left work.” *Early v. Employment Department*, 274 Or App 321, 329 n.2, 360 P3d 725 (2015) (when claimant gave 30 days’ notice that she was leaving work, the proper time to assess whether claimant had good cause to leave work based on a supervisor’s behavior was not when she gave notice but circumstances as they existed on her last day of work); *see also Constantine v. Employment Department*, 200 Or App 279, 281-282, 117 P3d 677 (2005) (when claimant provided two weeks’ notice of her intended resignation, whether claimant had good cause to leave work and had exhausted all reasonable alternatives was based on claimant’s actions between the date on which she gave notice and the final day of her employment since “a person does not leave work until the end of the last day that the person works”). Accordingly, we will evaluate whether claimant had good cause for leaving work both at the time he provided his notice of resignation to the employer on June 21, 2016 and at the time he actually left work, two months later on August 17, 2016.

On June 21, 2016, when claimant submitted his resignation to the employer, he did so because he feared the employer would reduce his compensation in the upcoming year to a level that imposed a financial hardship and he needed sufficient time to “bombard [potential new] employers with applications.” Audio at ~32:23. However, the applicable regulation makes clear that it is not good cause for a claimant to leave work in order to allow him or her to search for new work, as claimant did here. As well, when claimant submitted his resignation notice on June 21, 2016, while there was possibility that claimant’s compensation might be reduced, claimant did not know how likely it was that the reduction would occur, by how much his income would be diminished and whether any such reduction would, in fact, cause him grave financial hardship. Audio at ~10:46. Indeed, the employer’s witness testified credibly that if the grant funding for claimant’s position were reduced, the employer would not have reduced claimant’s rate of pay but would have made up the shortfall from other of its funding sources. Audio at ~37:12, ~38:12, ~39:03. On this record, claimant did not meet his burden to show that his circumstances were grave when he submitted his notice of resignation on June 21, 2016, or that he had good cause to leave work at that time.

Assessing claimant's circumstances on August 17, 2016, his last day of work, he also did not show that he had good cause to leave work for the position offered to him by the school district in Hawaii. It appears that claimant's position with that new employer was contingent on him passing a background check that it had yet to conduct at the time he left work. Audio at ~18:00, ~19:08. 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 a claimant actually leave work. Unemployment Insurance Benefits Manual (April 2, 2010) at Ch. 442 §A; *see 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 the school district in Hawaii was conditioned on his passing a background check that it had not conducted at the time claimant left work, there is insufficient evidence to show that claimant had good cause for leaving work with the employer when he did not accept the new work with the school district in Hawaii.

On this record, claimant did not show that good cause existed for him to leave work either at the time he submitted his notice of resignation to the employer on June 21, 2016 or on his last day of work on August 17, 2016. For these reasons, claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-73767 is affirmed.

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

DATE of Service: February 14, 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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