

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0087

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant refused without good cause to accept an offer of suitable work from the employer (decision # 113555). Claimant filed a timely request for hearing. On January 17, 2017, ALJ Wymer conducted a hearing, and on January 19, 2017 issued Hearing Decision 17-UI-74947, affirming the Department's decision. On January 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On November 22, 2016, claimant filed an initial claim for unemployment insurance benefits with the Department. Claimant was seeking work as a flagger. The Department determined that claimant's labor market included the entire state of Oregon. The rate of pay prevailing for work as a flagger in Oregon is \$12.84 per hour.

(2) COAT Flagging regularly offered claimant work as a flagger. On November 16, 2016, the employer offered claimant work as a flagger in Tillamook, Oregon on November 21, 2016 and November 22, 2016. The employer offered claimant 14 hours on those days at a rate of \$23.96 per hour.

(3) Claimant resided in Vancouver, Washington. Traveling between Vancouver, Washington and Tillamook, Oregon generally took claimant approximately three hours. Claimant did not like to make that drive at night, and, to accept work in Tillamook, Oregon would have wanted to get a hotel room for the night. Because claimant had agreed to care for a neighbor's cats on November 21st and November 22nd and had cats of her own, she did not want to be away from home overnight. For those reasons, claimant refused the employer's offer to work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant refused an offer of suitable 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. "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.” OAR 471-030-0038(6) (August 3, 2011).¹ That rule requires that consideration be given to suitable work factors set forth in ORS 657.190, which includes “the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for security local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.”²

There is no material dispute that the employer made a *bona fide* offer to claimant for work at a designated location and time and a suitable rate of pay, nor is there any dispute that claimant refused the offer of work. Although the work was located approximately a three-hour drive from claimant’s residence, the work was located within claimant’s labor market, and the distance from her residence did not make the work offered unsuitable for claimant. Claimant refused the offer of work because she preferred not to drive at night and would have wanted to get a hotel room in Tillamook so she did not have to do so. Claimant did not want to be away from home overnight because she was responsible for the care of her own and her neighbor’s cats and felt uncomfortable leaving them overnight, however. Claimant did not assert or show that she was medically restricted from driving at night or that her aversion to night driving constituted “good cause” for refusing the work, nor did she establish that her desire to care for cats was “such that a reasonable and prudent person, exercising ordinary common sense” would refuse an offer of 14 hours of work expected to pay \$335.44.³

We cannot say under the circumstances that claimant refused the employer’s offer of suitable work for reasons amounting to “good cause.” Claimant is therefore disqualified from receiving unemployment insurance benefits until she has requalified by earning four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-74947 is affirmed.

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

DATE of Service: February 6, 2017

¹ Claimant testified that she had a medical issue in December 2016 and, at the time of the hearing, was going to be released for work the following week. Audio recording at ~ 17:00. Claimant’s medical issue is not relevant to this case, because she testified it arose in December, which is after the date of claimant’s job refusal, and was not one of the reasons she cited for refusing the employer’s offer of work. Therefore, the general “good cause” standard, and not the standard applicable to individuals with permanent or long-term mental or physical impairment, applies to this case.

² The suitability factors listed in ORS 657.195 do not apply to this case. In addition, although OAR 471-030-0037(2) (August 2, 2011) provides that work is not suitable if the pay is substantially less than the rate of pay prevailing in the locality, claimant did not cite inadequate pay as one of the reasons she refused the offer of work. The record also shows that the rate of pay offered to claimant was almost double the rate of pay prevailing in claimant’s labor market, and did not make the work unsuitable.

³ 14 hours of work at \$23.96 per hour equals \$335.44. Although the employer might ultimately have had less than 14 hours of work available, that does not change the fact that the offer claimant refused was for work paying \$335.44.

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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