

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0116

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed without good cause to accept suitable work when offered by the employer (decision # 114423). Claimant filed a timely request for hearing. On January 18, 2017, ALJ McGorin conducted a hearing, and on January 18, 2017 issued Hearing Decision 17-UI-74911, affirming the Department's decision. On January 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant lived in Klamath Falls, Oregon. On or about October 31, 2016, claimant's grandparents, who lived in Bend, Oregon, informed him that their contractor's owner was going to be at the job site after 12:00 p.m. on November 3, 2016, and that the owner was willing to meet with claimant to discuss the possibility of claimant working for the contractor.

(2) On November 2, 2016, Express Employment Professionals offered claimant one day of work on November 3, 2016 starting at 8:00 a.m., which paid \$11 per hour. Claimant refused the offer in order to drive to Bend to meet with the contractor's owner on November 3.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant failed without good cause to accept suitable work when offered by the employer.

ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if claimant failed without good cause to accept suitable work when offered.¹ Here, it is undisputed that the employer

¹ As used in ORS 657.176(2)(d) and (e), the term "work" means the performance of services for which remuneration, compensation or wages is intended to be received or earned. OAR 471-030-0038(6) (August 3, 2011). In determining whether any work is suitable for an individual, the Department shall consider, among other factors, 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 securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190. No work is deemed suitable if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality. ORS 657.195.

offered claimant one day of work on November 3, 2016, and that the work was suitable. The issue is whether claimant had good cause for failing to accept the employer's offer.

OAR 471-030-0038(6) (August 3, 2011) provides that "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. A claimant who refuses work has the burden to show by a preponderance of evidence that no reasonable and prudent person would have accepted the work when offered. *Vail v. Employment Department*, 30 Or App 365, 567 P2d 129 (1977). Here, claimant failed to show that no reasonable and prudent person would have accepted the employer offer of work on November 3, 2016 and rescheduled his meeting with the contractor's owner to discuss the mere possibility of claimant working for the contractor, with an uncertain start date, rate of pay and end date.

Claimant therefore failed to establish good cause for failing to accept the employer's offer of work, and is disqualified from receiving benefits.

DECISION: Hearing Decision 17-UI-74911 is affirmed.

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, 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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