

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0127**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141922). Claimant filed a timely request for hearing. On January 24, 2017, ALJ Lohr conducted a hearing at which the employer did not appear, and on January 25, 2017 issued Hearing Decision 17-UI-75345, affirming the Department's decision. On January 31, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Quantem Aviation Services LLC employed claimant as a ramp agent from November 28, 2016 until December 7, 2016. Claimant accepted this employment because he had been laid off from his previous work and needed income.

(2) The employer paid claimant \$12.50 per hour. Claimant worked three or four hours per day five days per week, for approximately between fifteen and twenty hours per week. Claimant's weekly pay was between \$187.50 and \$250. Claimant's work day began at approximately 6:00 p.m. and sometimes lasted until 11:30 p.m. or midnight.

(3) After November 28, 2016, claimant continued to look for work other than with the employer. Sometime before December 2, 2016, claimant attended a job fair and learned of a job with Michael's Messenger Service. That job would involve claimant using his own car to deliver pharmacy supplies to customers. Michael's notified employees by text message or over the phone of the pharmacy pick-ups and customer deliveries it needed to have made, and employees would select the routes that they wanted to perform and notify Michael's. The hours that employees worked for Michael's were dependent on the jobs that the employee selected and there were no minimum hours that an employee needed to work. The hourly pay rate varied among jobs and was different for different jobs; the pay was a flat rate for some jobs. Sometime before December 2, 2016, claimant informed Michael's that he would accept work as a pick-up and delivery driver. Claimant decided to accept the job because his wife was pregnant, he wanted to be available to her if she needed him, and the work hours with Michael's were more flexible than with the employer. Audio at ~ 13:18, ~23:32. Claimant also believed he could earn more working for Michael's than he made working for the employer. Audio at ~24:40. Michael's did

not give claimant any particular starting date for his employment, but claimant was told, “We’ll put these out [the delivery routes that are available] and if you’re available, you can go ahead and say you’re available [and perform those pick-ups and deliveries].” Audio at ~18:37.

(4) On December 2, 2016, claimant informed the employer that he was leaving work, effective December 11, 2016. However, claimant did not work for the employer after December 7, 2016 because of inclement weather and illness.

(5) December 23, 2016 was the first day claimant selected a delivery route for Michael’s and the first day that he worked for Michael’s. Between December 23, 2016 and January 24, 2017, claimant performed only four routes for Michael’s. Claimant worked 3.5, 5.5, 5.0 and 6.5 hours making deliveries for Michael’s, and for three of those jobs he earned \$17 per hour and for one of them he earned a flat rate of \$55.80.

(6) Claimant’s weekly benefit amount was \$590.

**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). If an individual who leaves work to accept other work, good cause exists only if, among other things, the offer of work is definite and the new work pays an amount equal or in excess of the weekly benefit amount or an amount greater than the work left. OAR 471-030-0038(5)(a). 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.

Claimant testified that he left work to accept the offer of new work with Michael’s Messenger Services. Audio at ~ 14:57. To the extent this was the reason for claimant’s decision to quit, claimant did not show that the offer was “definite” within the meaning of OAR 471-030-0038(5)(a). The Department’s Benefits Manual states that to satisfy the requirement of definiteness, an offer must generally include an expected start date. Unemployment Insurance Benefits Manual (April 1, 2010 rev.), Ch. 400 §442B. While claimant testified Michael’s told him he could start whenever he decided he was available for a route, such an open-ended starting time was neither specific nor concrete. That claimant did not work his first job for Michael’s until December 23, 2016, which was two weeks after he quit work for the employer, also suggests that, when he quit, his start date with Michael’s was not exact or clear cut. Claimant did not show that the job offer with Michael’s was “definite” at the time he quit work.

In addition, claimant also did not meet his burden to show that when he left work the offered job with Michael’s was reasonably likely to pay more than the job he quit with the employer or his weekly benefit amount. At hearing, claimant was unable to provide information about the compensation Michael’s was likely to provide to him other than stating the pay “varied” depending on the job, and stating what he was actually paid on the four jobs he ultimately worked for Michael’s. Audio at ~16:38.

Claimant was unable to estimate the hours he would thought he would be working for Michael's when he quit work with the employer. Audio at ~17:15. Although claimant testified as to the rate of pay he earned from Michael's on the four jobs he had between December 23, 2016 and January 24, 2017, the maximum he could have earned from those four jobs was \$344.80.<sup>1</sup> Other than indicating that this first day of working for Michael's was December 23, 2016, claimant provided no more specific information about when he performed the work for which he received this compensation. The amount that claimant earned from Michael's, even if allocated to one week only, was less than his weekly benefit amount of \$590. Because claimant was unable to provide specific detail about the hours and earnings he expected to receive from Michael's, or the number of weeks he actually worked to earn the \$344.80 from Michael's, there is also insufficient evidence on which to conclude claimant reasonably expected to earn from Michael's more than the \$250 per week he earned working for the employer. For these reasons, claimant did not show that he had good cause to leave work based on the pay he would receive from Michael's.

Claimant also alluded to leaving work because his wife was pregnant and he wanted a more flexible work schedule than he had with the employer to allow him to look after this wife. Audio at ~13:18; ~23:42. However, claimant did not present evidence showing how or why his wife's pregnancy created a situation of gravity that reasonably prevented him from working weeknights from approximately 6:00 p.m. until 10:00 or 11:00 p.m., and occasionally until midnight. Absent evidence supporting a grave need to be with his wife during what would have been his evening work hours, he did not show that his wife's pregnancy was good cause for him to leave work.

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

**DECISION:** Hearing Decision 17-UI-75345 is affirmed.

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

**DATE of Service:** February 24, 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](http://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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<sup>1</sup> Allocating the \$55.80 claimant earned on the flat rate job to the day he worked the least hours, 3.5, yields the maximum estimate for claimant's pay on the four jobs he had beginning on December 23, 2016. After subtracting the 3.5 hours that have been imputed the flat rate job, claimant worked a total of 17 hours at \$17 per hour, for \$289. Adding the \$55.80 that claimant earned on the flat rate job, to the \$289 that claimant earned from jobs paying hourly, claimant earned a total of \$344.80 from Michael's over the period of December 23, 2016 through January 24, 2017.

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