

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0154

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 123712). Claimant filed a timely request for hearing. On January 24, 2017, ALJ Wyatt conducted a hearing, and on January 26, 2017 issued Hearing Decision 17-UI-75521, affirming the Department's decision. On February 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Department of Corrections employed claimant as a psychiatric social worker from sometime in approximately 2008 until October 26, 2016.

(2) On September 21, 2016, claimant received a letter from the Oregon Department of Human Resources (DHS) offering her a position as a program analyst. The letter provided the starting date, pay rate and work hours for the offered position. The letter also stated that claimant needed to bring certain documents to DHS, complete certain paperwork and pass a background check before the hiring process was finalized. Claimant accepted the offer from DHS.

(3) On September 23, 2016, claimant met with representatives of DHS, presented the requested documents, and completed the required paperwork. At that time, claimant was informed that a drug test was a mandatory part of the DHS background check. On that same day, claimant provided a urine sample for drug testing. At that time, claimant was told that she should have her pharmacy fax a list of prescriptions she was taking to the laboratory testing the sample if she was concerned that some prescriptions would otherwise show up as prohibited substances. Claimant was told the deadline by which the laboratory needed to receive the prescription list. Sometime later, claimant asked her pharmacy to fax a summary of her prescription medications to the laboratory. The pharmacy failed to fax the prescription list to the laboratory within the required time frame.

(4) On October 6, 2016, claimant notified the employer that she was resigning effective October 26, 2016 to take a job offered to her by DHS.

(5) On Friday, October 14, 2016, DHS notified claimant by email that DHS's "ability to offer [her] a position had changed" and the job offer was withdrawn. Audio at ~21:08. On Monday, October 17, 2016, claimant spoke with a DHS representative about the reason for the withdrawal of the job offer and learned that the urine sample she submitted on September 23, 2016 had tested positive for prohibited substances. Claimant had been taking a prescription drug that led to the positive result, and later determined that the testing laboratory had not reviewed the list of medications she was prescribed, or taken them into account in reporting the results of the drug test, because the list was not timely submitted. On October 17, 2016, the DHS representative with whom claimant spoke encouraged her to continue her employment with the employer and to apply for other positions she was interested in at DHS as they became available.

(6) On October 18, 2016, claimant spoke with her work supervisor and asked if she would be allowed to rescind her resignation with the employer. The supervisor told claimant that the employer would not allow her to do so.

(7) On October 26, 2016, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 leaves work to accept an offer of other work, good cause exists to leave the individual's existing employment only if the offer of new work is, among other things, "definite" at the time of leaving. OAR 471-030-003895)(a). The standard for showing good cause is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

At hearing, claimant testified that while she left work with the employer to accept the job that DHS had offered to her, there were also other factors about her employment that constituted good cause for her to leave that work. Audio at ~29:17. However, claimant would not have left work when she did but for the offer of new work from DHS, and when the DHS offer was withdrawn, she tried to rescind her resignation. Based on this record, we find that DHS was the proximate cause for claimant's decision to quit work for the employer when she did.

As claimant described it, the job that DHS offered to her was contingent on taking and passing a background check, which included passing the required drug test. Audio at ~13:48, ~15:25. At the time claimant submitted her resignation to the employer on October 6, 2016, she had not yet received the results of her drug test and did not know if she would fulfill that necessary condition to securing the job with DHS. Audio at ~25:00. 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 decided to leave work. Unemployment Insurance Benefits

Manual (April 2, 2010) at Ch. 400, §442B. The Manual specifically mentions that a contingency of “passing a drug test” at the time a claimant announces an intention to leave work renders the offer of new work not definite. *Id.*; see *Appeals Board Decision*, 2017-EAB-0064, February 14, 2017 (a job offer contingent on passing a background check was not “definite” within the meaning of OAR 471-030-0038(5)(a) and was not good cause to leave work before it was conducted and its results were known). Because the new work offered to claimant by DHS was contingent on passing a drug test and claimant did not know the outcome of that test at the time she notified the employer she was resigning, claimant did not have good cause to notify the employer she was resigning when she did to accept new work with DHS.

Although claimant attempted to rescind her resignation with the employer when she learned she had failed the drug test and DHS had withdrawn its offer of a job, an employer is not required to accept an attempted rescission of a resignation. Having accepted claimant’s initial notice of resignation, an employer may reject claimant’s later attempt to rescind it, and hold claimant to the terms of the initial notice of voluntary leaving. *Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999). That claimant tried to rescind her notice of resignation and the employer refused accept the rescission does not change the nature of this work separation or the analysis of whether claimant had good cause to submit her resignation when she did.

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

DECISION: Hearing Decision 17-UI-75521 is affirmed.

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

DATE of Service: March 6, 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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