

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0234

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with the employer without good cause (decision # 100942). Claimant filed a timely request for hearing. On February 14, 2017, ALJ Lohr conducted a hearing and on issued Hearing Decision 17-UI-76895, affirming the Department's decision. On February 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Tower Timber Services Inc. employed claimant from February 12 to July 31, 2015.

(2) The employer paid claimant \$17 per hour. When claimant accepted the job, the employer informed him he would have steady work. Shortly after claimant started work, however, the employer began temporarily laying off employees, including claimant, every other week. Claimant believed the employer had been dishonest when informing him that he would have steady work, and began looking for other work.

(3) On July 31, 2015, claimant quit working for the employer to accept an offer of other work from Dancer Logging. Dancer Logging informed claimant that the work would pay \$16.50 per hour, which would increase to \$17 per hour at some point in the future. Dancer Logging also informed claimant that the work would start as soon as possible and that claimant would have steady work. The work did not, in fact, begin until October 2015.

(4) Claimant's weekly benefit amount was \$538.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work with the employer 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 generally defined 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). The standard 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. If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work, or the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time reasonable under the circumstances. OAR 471-030-0038(5)(a). Furthermore, the offered work must reasonably be expected to continue, and must pay an amount equal to or in excess of the individual’s weekly benefit amount, or an amount greater than the work left. *Id.*

Here, claimant quit work, in part, because he believed the employer had been dishonest when informing him that he would have steady work. However, the record fails to show the employer knew at the time claimant would not have steady work, that it subjected claimant to weekly layoffs for other than legitimate business reasons, or that it was contractually obligated to provide claimant more steady work. Nor did claimant show that continuing to work substantially interfered with his ability search for full time work, or that the cost of working exceeded the amount of remuneration he received. Claimant therefore failed to establish that he quit work with good cause under OAR 471-030-0038(4) or OAR 471-030-0038(5)(e).

Claimant also quit work to accept an offer of other work. However, the offer was definite only to the extent that the work was to pay \$16.50 per hour. Claimant failed to show he was guaranteed a minimum amount of hours, given a definite start date, or guaranteed a pay raise after a definite period of time. Absent such showings, claimant failed to establish that he quit work to accept a definite offer of work that was to begin in the shortest length of time reasonable under the circumstances, or that paid an amount equal to or in excess of his weekly benefits amount, or an amount greater than the work left. We therefore conclude that claimant quit work without good cause under OAR 471-030-0038(5)(a).

Claimant failed to establish he quit work with good cause under OAR 471-030-0038(4), OAR 471-030-0038(5)(e) or OAR 471-030-0038(5)(a). He therefore is disqualified from receiving benefits.

DECISION: Hearing Decision 17-UI-76895 is affirmed.

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

DATE of Service: March 1, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.