

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0456

Hearing Decision 17-UI-80959 Affirmed ~ Disqualification
Hearing Decision 17-UI-79895 Affirmed ~ Overpayment

PROCEDURAL HISTORY: On January 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with the employer without good cause (decision #152624). On January 24, 2017, decision # 152624 became final without a request for hearing having been filed. On February 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$690 overpayment based on decision # 152624 (decision # 164815). On February 27, 2017, claimant filed a timely request for hearing regarding decision # 164815. On February 28, 2017, claimant filed a late request for hearing regarding decision # 152624. On March 27, 2017, conducted a hearing regarding decision # 164815, and on March 29, 2017, issued Hearing Decision 17-UI-79895, affirming that decision. On April 10, 2017, ALJ S. Lee conducted a hearing regarding decision # 152624, and on April 13, 2017, issued Hearing Decision 17-UI-80959, first concluding claimant had shown good cause for his late request for hearing regarding decision # 152624, but then affirming that decision. On April 18, 2017, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-79895 and 17-UI-80959. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0457 and 2017-EAB-0456, respectively).

Based on a *de novo* review of the entire record regarding Hearing Decision 17-UI-80959, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant had shown good cause to extend the filing deadline for his request for hearing in that matter a reasonable time are **adopted**.

FINDINGS OF FACT: (1) On July 22, 2016, claimant filed an initial claim for unemployment insurance benefits. The Department determined that his weekly benefit amount was \$138.

(2) Shortly before October 30, 2016, claimant applied for a position as substitute cook for Oregon Coast Community Action (ORCCA). ORCCA conditionally hired claimant and paid him to attend an orientation on October 30, 2016. Claimant was expected to complete some paperwork, undergo a

background check and satisfy other preliminary requirements prior to formal hire and placement on a work schedule. The job for which claimant applied paid \$10.50 per hour without a guaranteed number of hours of work per week.

(3) On or about October 31, 2016, claimant withdrew his interest in the position with ORCCA and chose not to complete the hiring process. Instead, he decided to pursue other employment opportunities that he believed would provide him with a better wage and hours guarantee and require a shorter commute. One of those positions was as a substitute school bus driver for Myrtle Point School District, which eventually hired him on January 11, 2017 for that position. Claimant understood that potentially he could have worked for ORCCA and other part-time employers at the same time.

(4) Each week from October 30, 2016 through December 3, 2016 (weeks 44-16 through 48-16), claimant filed weekly claims for benefits. When filing his claim for the week October 30 through November 5, 2016 (week 44-16) claimant failed to report to the Department that he had voluntarily left work with ORCCA that week, after being paid to attend the orientation. Based on that omitted fact about a potentially disqualifying work separation, the Department erroneously paid claimant \$138 per week for that week and each of the four subsequent weeks at issue, for a total of \$690 in benefits.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause and was overpaid \$690 in unemployment insurance benefits.

Voluntary Leaving. 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). 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. Leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A).

Claimant left work with ORCCA because after attending the paid orientation he determined that the job was not a good fit for him based on concerns over the distance of the commute, lack of guaranteed hours and other employment opportunities he was pursuing including one as a school bus driver with a local school district. Claimant decided to abandon the job with ORCCA even though he understood that he might have been able to work at that position and another by adjusting schedules. Audio Record, 2017-UI-62282, at 25:00 to 27:00. Claimant failed to establish that no reasonable and prudent person in his circumstances, interested in maintaining employment and maximizing his work hours, would have continued to work with ORCCA, while also pursuing the local school district position, for an additional period of time. Claimant also failed to establish that the job with ORCCA was unsuitable for him considering the factors listed in ORS 657.190¹, and leaving suitable work to seek other work is also without good cause.

¹ 657.190 provides: “In determining whether any work is suitable for an individual, the Director of the Employment 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

Claimant voluntarily left work with ORCCA without good cause, and is, therefore, disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

The Department paid claimant \$690 in benefits which he was not eligible to receive because he quit work with ORCCA without good cause. The Department paid benefits to claimant because, when he filed his weekly claim for benefits for week 44-16, he withheld information about terminating his employment opportunity with ORCCA, a work separation, on or about October 31, 2016. Claimant asserted at hearing that when he ended his interest in employment with ORCCA after being paid for orientation, he did not believe that he had quit a job. Audio Record, 2017-UI-62279, at 15:00 to 18:30. However, "employment" means service for an employer performed for remuneration, i.e. wages. ORS 657.030 (1); OAR 471-030-0038(1)(a) (November 1, 2009). Claimant's failure to report his work and work separation therefore amounted to a false statement or failure to disclose a material fact. Regardless of claimant's knowledge or intent when withholding that information from the Department, claimant caused the overpayment and is therefore liable to repay it or have the overpayment amount deducted from future benefits otherwise payable.

DECISION: Hearing Decisions 17-UI-79895 and 17-UI-80959 are affirmed.

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

DATE of Service: May 12, 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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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"