

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0551**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95908). Claimant filed a timely request for hearing. On May 1, 2017, ALJ Seideman conducted a hearing at which the employer did not appear, and on May 2, 2017 issued Hearing Decision 17-UI-82275, affirming the Department's decision. On May 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Hi Tech Cleaning employed claimant from February 1, 2017 until February 3, 2017.

(2) When claimant started work for the employer, he was receptive to job offers from other potential employers. After working two days, on February 1 and 2, claimant did not report for work on Friday, February 3, because he was sick. Claimant notified the employer of this absence.

(3) While sick at home on February 3, 2017, the manager of International Fitness, an employer from which claimant had previously sought work, called claimant and offered him a job. The manager told claimant that he would be performing cleaning work for International Fitness and expressed that the people who were currently performing that work for International Fitness were not doing an adequate job. The manager told claimant that she wanted to meet with claimant on Monday, February 6, 2017. When claimant replied that he was expected to work for the employer on Monday, the manager from International Fitness insisted that claimant meet with her on Monday. Claimant agreed. That same day, claimant called and told the employer he thought the job offered by International Fitness was a better one for him and he quit.

(4) On Monday, February 6, 2017, claimant met with the manager for International Fitness. Claimant expected that his work for International Fitness would start that day. Instead, the manager told claimant that the starting date for his work with International Fitness would be in two and one-half weeks, or on Friday, February 24, 2017. Claimant called the employer to learn if he could continue working despite

his resignation on February 3, 2017 and was told that he could not because the employer had already hired replacements for him.

**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 a claimant leaves work to accept an offer of other work, good cause for leaving exists only if the offer is definite and is to begin in the shortest length of time deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a).

Claimant did not present any evidence suggesting that International Fitness gave him a definite date on which the work it offered to him was going to start until he met with its manager on February 6, 2017. As of the February 3, 2017 date that claimant left work for the employer, he did not know when the job he had just accepted with International Fitness would start, although he suspected his first day was going to be February 6, 2017. The Department has issued guidelines stating that, to be “definite” within the meaning of OAR 471-030-0038(5)(a), a job offer must include “an expected start date” to ensure that a claimant does not “[leave] the old job too soon.” Oregon Department of Employment, Benefit Manual (rev. April 1, 2010), Ch. 400 §442 (B). Accordingly, International Fitness’s offer of new work to claimant was not the type of “definite” job offer needed for him to establish good cause for him to leave work under OAR 471-030-0038(5)(a). In addition, two and a half weeks elapsed between when claimant left work for the employer on February 2, 2017 and when his new job with International Fitness started on February 24, 2017. Common sense suggests that the lapse of time between those two jobs was unreasonably lengthy and claimant presented no evidence suggesting or tending to suggest that two and a half weeks was the shortest time reasonable under the circumstances. For this reason, as well, claimant did not demonstrate that he had good cause for leaving work when he did to accept the offer of new work with International Fitness. Finally, although claimant tried to rescind his resignation with the employer on February 6, 2017 when he first became aware that the job with International Fitness would not begin until February 24, 2017, whether he had good cause to quit is determined as of the date he left work and is not affected by actions that he took or tried to take after he resigned. The employer had no obligation to accept claimant’s attempt to rescind his February 3, 2017 resignation and to extend his employment. *See generally, Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982) (employer may reject claimant’s attempt to rescind resignation and work separation will remain a voluntary leaving). As of the day he resigned from work, claimant did not have good cause for leaving work based on the offer of new work from International Fitness.

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-82275 is affirmed.

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

**DATE of Service: June 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](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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