

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0615

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that on July 26, 2014, claimant voluntarily left work for Jimmy John's Gourmet Sandwiches without good cause (decision # 93137). On January 29, 2015, decision # 93137 became final without a request for hearing having been filed. On November 10, 2016, claimant filed an untimely request for hearing. On November 16, 2016, ALJ Kangas issued Hearing Decision 16-UI-71219, dismissing claimant's hearing request, subject to his right to renew the request by responding to an appellant questionnaire within 14 days. On December 6, 2016, claimant submitted a response to the appellant questionnaire and a timely application for review of Hearing Decision 16-UI-71219 to the Employment Appeals Board (EAB). EAB forwarded the response to the questionnaire to the Office of Administrative Hearings (OAH), and by letter dated December 6, 2016, OAH notified claimant that, because his response to the appellant questionnaire was late, OAH would not review the response.

On December 14, 2016, EAB issued Appeals Board Decision 2016-EAB-1375, reversing Hearing Decision 16-UI-71219 and remanding the matter to the Office of Administrative Hearings (OAH) for a hearing to develop the record on the issue of claimant's untimely hearing request. OAH issued notice of a hearing scheduled for January 27, 2017, and on January 27, 2017, ALJ Wyatt issued Hearing Decision 17-UI-75594, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On April 21, 2017, ALJ Wyatt conducted a hearing and on April 28, 2017, issued Hearing Decision 17-UI-82091, granting claimant's request to reopen and concluding that claimant voluntarily left work without good cause.¹

¹ Due to an error made by OAH, the issues of whether claimant had good cause for his late hearing request and, if so, whether he filed his hearing request within a reasonable time, were not listed on the Notices of Hearing issued for the January 27 and April 21 hearings. As a result and contrary to the order in Appeals Board Decision 2016-EAB-1375, no record was ever developed on the issue of claimant's untimely hearing request at the April 21 hearing. Instead, the ALJ obtained evidence and ruled only on claimant request to reopen the hearing and the merits of the administrative decision, *i.e.*, whether claimant had good cause for voluntarily leaving work. By conducting a hearing on the merits, we conclude that the ALJ implicitly ruled to allow the late request for hearing. Such a conclusion is consistent with our ruling in Appeals Board Decision 10-AB-3722 (2010), in which we found it was "plain error" for an ALJ to dismiss a late hearing request after a hearing on the merits

FINDINGS OF FACT: (1) Jimmy John's Gourmet Sandwiches employed claimant as a delivery driver from July 10 through 26, 2014.

(2) When the employer hired claimant, claimant was attending school part time at Central Oregon Community College (COCC). The employer initially agreed to a work schedule that would allow claimant to attend his classes. The employer subsequently changed claimant's work schedule, however, so that it conflicted with claimant's class schedule. Claimant had already paid for his classes, and would have lost his tuition money and failed his classes if he dropped them. On or about July 26, 2014, claimant quit his job so that he could continue attending COCC.

CONCLUSION 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 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). 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 her employer for an additional period of time. Leaving work without good cause includes "[l]eaving to attend school, unless required by law." OAR 471-030-0038(5)(a)(D).

Claimant quit his job with the employer so he could attend classes at a community college. Claimant offered no evidence to demonstrate he was required by law to attend these classes. He therefore failed to demonstrate good cause for leaving work under OAR 471-030-0038(5)(a)(D), and is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-82091 is affirmed.

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

DATE of Service: June 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.

has been conducted and concluded that in such cases, due process requires that EAB consider the merits of the administrative decision at issue.

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