

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0737

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80418). Claimant filed a timely request for hearing. On May 30, 2017, ALJ Meerdink conducted a hearing, and on May 31, 2017 issued Hearing Decision 17-UI-84512, affirming the Department's decisions. On June 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

On June 19, 2017, claimant filed a written argument with his application for review. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the June 19, 2017 argument when reaching this decision. On July 10, 2017, claimant filed another written argument and did certify that he provided a copy to the other parties. We considered that argument to the extent it related to information received into evidence at the hearing, and the entire hearing record.

FINDINGS OF FACT: (1) Fitzpatrick Painting, Inc. employed claimant from March 11, 2014 to June 22, 2016 as a painter.

(2) While claimant worked for the employer, he lived in Eugene, Oregon. Since approximately March 2016, claimant had been commuting one hour each direction to work for the employer in Salem, Oregon. The employer paid claimant \$16 per hour to work full time, Monday through Friday. Claimant disliked the time it took to commute to and from Salem for work.

(3) Before Wednesday, June 22, 2016, Checkmark Painting offered claimant full time, permanent work for \$16 per hour in the Eugene area.

(4) On June 22, claimant quit work with the employer to accept the offer of work from Checkmark Painting, to begin on June 27, 2016.

(5) Claimant was scheduled to work for the employer on June 22, 23 and 24, 2016, but did not work for the employer those days because he disliked driving to Salem to work. Claimant normally had Saturdays and Sundays off, and did not work those days. Claimant reported to work with Checkmark Painting on Monday, June 27, 2016.

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). When a claimant leaves work to accept an offer of other work, good cause exists only if the offer of work is definite, the offered work is to begin in the shortest reasonable length of time under the circumstances, the offered work is reasonably expected to continue and the offered work pays an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left. OAR 471-030-0038(5)(a). The standard for demonstrating good cause is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

Claimant left work with the employer to accept a new job with Checkmark Painting. Claimant reasonably expected the new job to continue, and it was full time and paid the same wage as the job he left. However, to determine if claimant had good cause to quit to accept the new job, the issue is whether the new job began in the shortest reasonable length of time under the circumstances when claimant quit. We conclude that it did not.

Department policy, set forth in the Unemployment Insurance Benefit Manual, provides that a claimant should make “sufficient arrangements” before leaving one job to start the new job within a reasonable amount of time. UI Benefit Manual, section 442.¹ The Department policy provides that “the amount of time claimant takes between the old and new work should be out of necessity (not for leisure) and should be for a reasonable amount of time only.” *Id.* The Department policy also provides that taking time off work for leisure, such as for a vacation, is not the sort of circumstance that would suggest the gap between the end of one job and the beginning of the next job met the “shortest reasonable” time requirement in the OAR 471-030-0038(5)(a) definition of good cause for leaving work. *Id.*

In this case, the only reason claimant provided for taking June 22, 23 and 24 off work in addition to his regularly scheduled weekend off was that he disliked driving to Salem. Audio Record at 17:58 to 18:08. However, claimant had been commuting to Salem for “a few months” before he quit, and testified that the only reason he disliked driving to Salem was the time it required to do so. Audio Record at 17:38 to 17:49, 18:55 to 19:12. Because claimant did not assert any reason for the three days off work other than his dissatisfaction with the time it took to commute to Salem, we infer claimant took the additional three days off work because he preferred to use the time for leisure rather than working and commuting to work, and not for any other purpose. Thus, based on the facts of this case, where claimant did not assert he needed the three days off in addition to his two-day weekend out of necessity rather than leisure, the new job was not set to begin in the shortest time reasonable under the circumstances.

¹ EAB takes notice of Employment Department policy, set forth in the Unemployment Insurance Benefit Manual, as referenced herein. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

Because the record does not show that the offered work was to begin in the shortest reasonable length of time under the circumstances, claimant did not show that he had good cause to leave work *when he did* to accept an offer of new work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-84512 is affirmed.

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

DATE of Service: July 17, 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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