

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0782

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 160557). Claimant filed a timely request for hearing. On June 20, 2017, ALJ Lohr conducted a hearing, and on June 21, 2017, issued Hearing Decision 17-UI-86235, affirming the Department's decision. On June 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Uwajimaya employed claimant as a fish wrapper from October 13, 2016 until March 6, 2017. While working for the employer, claimant also continued to work part time for his own catering business.

(2) During the time he worked for the employer, claimant experienced a number of personal and family problems, including his own and his father's illnesses. From October 13 until March 6, 2017, the employer approved 10 days of sick leave for claimant. In February 2017, the employer reduced claimant's hours to give claimant time to care for his father. Audio recording at 29:00.

(3) Sometime prior to March 7, 2017, claimant applied for a position with Ready Fit Go, a company that prepared healthy meals for adults. The position at Ready Fit Go was work very similar to the work claimant had been performing for his catering business. After claimant submitted his application to Ready Fit Go, he sent a text to his supervisor in which he told the employer he was quitting his job, effective immediately, because he had "too much happening in my life right now." Audio recording at 24:52. Claimant voluntarily left work for the employer because he had "too many problems" and

“wanted to move on,” because he was “pretty sure” that Ready Fit Go would hire him, and because he believed that working for Ready Fit Go would be a better situation for him. Audio recording at 19:01, 24:52.

(4) Soon after he quit his job with the employer, Ready Fit Go hired claimant; claimant then shut down his catering business. Audio recording at 15:46. Ready Fit Go initially told claimant he would begin work in April 2017; various difficulties delayed claimant’s start date, however. As of the date of the hearing in this matter, claimant had not yet begun full time work for Ready Fit Go.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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). 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.

Claimant decided to leave his work for Uwajimaya because he was faced with numerous personal problems, including his own and his father’s illnesses, and because he believed he would be hired by a company that was offering him a better work situation. Claimant never explained how his personal problems were in some way resolved by quitting his job for Uwajimaya – an employer that granted him sick leave when needed and reduced his work schedule to provide him time to care for his father. Nor did he explain how the new job he expected to obtain would improve his personal situation. For a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit by leaving work. *Oregon Public Utility Commission v. Employment Dept.*, 267 Or App 68, 340 P3d 136 (2014). Because claimant failed to show that quitting his job made any improvement in his personal situation, he failed to demonstrate that his personal problems constituted good cause for voluntarily leaving work.

To the extent that claimant also quit his job to accept employment with a new employer, Ready Fit Go, claimant also failed to demonstrate good cause for voluntarily leaving work. An individual who leaves work to accept an offer of a new job demonstrates good cause for quitting only if the offer of work is definite and the work is to begin in the shortest length of time “as can be deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a). Here, claimant did not have a definite offer of employment from Ready Fit go at the time he quit his job with Uwajimaya – only a belief that he was “pretty sure” the new employer would hire him. Because claimant had no definite offer of employment from Ready Fit Go on the date he voluntarily left work for Uwajimaya, he failed to demonstrate an offer of a new job constituted good cause for quitting his job.¹

¹ While claimant’s belief proved to be correct, and Ready Fit Go hired him, the appropriate time to evaluate whether claimant had good cause was when claimant quit his job with Uwajimaya. See *Early v. Employment Dept.*, 274 Or App 321, 328, n2 (2015) (the appropriate time to determine if the claimant had good cause for voluntarily leaving work was not when claimant gave notice of her resignation, but when she actually quit her job).

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-86235 is affirmed.

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

DATE of Service: July 24, 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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