

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0809

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit without good cause (decision # 135618). Claimant filed a timely request for hearing. On June 26, 2017, ALJ Janzen conducted a hearing, and on June 27, 2017 issued Hearing Decision 17-UI-86655, concluding the employer discharged claimant, but not for misconduct. On July 5, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Moose Sisters employed claimant, part-time, as a bartender and server from June 29, 2016 to March 29, 2017. Claimant earned approximately \$195.00 per week plus tips from her work for the employer.¹

(2) On January 26, 2017, claimant filed an initial claim with the Department, which determined that her weekly benefit amount was \$412. Claimant continued to work part-time for the employer, while she searched for full-time work.

(3) On March 29, 2017, Peak Performance Physical Therapy extended claimant an offer of permanent full-time work as a billing specialist with earnings of approximately \$520.00 per week.² The job was

¹ Claimant's job with the employer averaged 15 to 20 hours per week and paid \$9.75 per hour, plus tips. Audio Record ~ 11:40 to 12:40. 20 hours per week at \$9.75 per hour equals \$195.00 per week.

² Claimant's new job was full time and starting out, paid \$13.00 per hour, plus benefits. Audio Record ~ 11:25 to 11:40. 40 hours per week at \$13.00 per hour equals \$520.00 per week.

scheduled to begin on April 10, 2017. Claimant accepted the position. That day, claimant informed the employer's owner that she had accepted a new job beginning April 10 but could continue to work for the employer until April 9, 2017. However, the employer told claimant that it would find others to cover claimant's remaining shifts and there was no need for claimant to continue her employment, effectively discharging her that day.

(4) Claimant began her job with Peak Performance on April 10, 2017, as expected.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct, within fifteen days prior to a planned quit for good cause.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or 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). A claimant who leaves work to accept an offer of other work has shown "good cause" if the offer of work is definite, pays an amount equal to or in excess of the weekly benefit amount or more than the work left, begins in the shortest length of time reasonable under the circumstances, and is reasonably expected to continue. OAR 471-030-0038(5)(a) (August 3, 2011).

ORS 657.176(8) provides that when an individual has notified an employer that she (or he) will quit work on a specific date, and the employer discharged her, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned quit date.

On March 29, 2017, claimant notified the employer's owner that she had accepted a new job beginning April 10, 2017, but would continue to work through April 9, 2017. However, the owner declined claimant's offer to continue to work and discharged her that day after concluding there was no need for her to continue any longer because others could cover her remaining shifts. An employer does not have the right to expect an employee to refrain from quitting a job. Nor does the record establish that claimant's discharge was due to any other willful or wantonly negligent violation on claimant's part of a reasonable employer expectation. The employer therefore discharged claimant, but not for misconduct under ORS 657.176(2)(a). The remaining issue is to determine whether ORS 657.176(8) applies to this case based on whether claimant's planned quit would have been with or without good cause.

There is no evidence suggesting that claimant's offer of work from Peak Physical Therapy was either indefinite or was not reasonably expected to continue. The work, as offered, was expected to pay more than both claimant's work with the employer and her weekly benefit amount, and would have begun the

day after claimant's proposed last day with the employer, which was the shortest length of time reasonable under the circumstances. Under OAR 471-030-0038(5)(a), claimant quit work with good cause to accept an offer of other work.

In sum, claimant notified the employer of her intention to quit work with good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Thus, ORS 657.176(8) does not apply to this case. Accordingly, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-86655 is affirmed.

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

DATE of Service: August 2, 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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