

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1033

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121457). Claimant filed a timely request for hearing. On August 17, 2017, ALJ Messecar conducted a hearing, and on August 25, 2017, issued Hearing Decision 17-UI-91147, affirming the Department's decision. On August 29, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Isenburg Caregiver Service (ICS) employed claimant as a caregiver from approximately April, 2017 until May 21, 2017. The employer provided in-home care service for its clients through caregiver employees such as claimant.

(2) From April 17, 2017 to May 18, 2017, claimant worked for the employer by providing care services for one of its clients at the rate of \$12.50 per hour. On May 18, 2017, the client notified claimant that it would no longer use her because she was no longer needed to care for the client.

(3) On May 19, 2017, the employer offered claimant the opportunity to care for another client, full-time, at the rate of \$10.20 per hour. Claimant declined the job because it was located in Fairview, approximately 25 miles from Coos Bay where claimant lived, and she believed transportation costs to and from Fairview would be too costly.

(4) On May 21, 2017, the employer offered claimant the opportunity to care for another client, part-time, in Coquille, OR. The offered employment was for three hours per day for no more than five days at \$10.20 per hour. Claimant declined the job after telling the employer that she "took another job...was working for somebody else and couldn't work for [the employer] anymore." Audio Record ~ 13:30 to 14:00. The new job was scheduled to start on June 15, 2017, would have paid claimant \$14.50 per hour, was located in Coos Bay, OR and was to provide her with 25 hours per week of work. The employer asked claimant to confirm her resignation in writing, which claimant did not do, and offered the work to another caregiver.

(5) On June 3, 2017, claimant contacted the employer and asked for work after telling the owner's administrator "she didn't get that job." Audio Record ~ 12:30 to 13:10. The employer told claimant that it had no work available and had concluded claimant quit on May 21, 2017.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

As a preliminary matter, the employer's witness and claimant disagreed regarding what had transpired regarding certain facts at issue. Because the employer's testimony was more detailed and based on contemporaneous business records, the employer's testimony had more probative value than claimant's, who remarked during the hearing that she could not remember many of the details of what had transpired two months earlier. Audio Record ~ 41:00 to 42:30. Accordingly, where the parties' evidence conflicted, we found facts in accordance with the employer's evidence.

Work Separation. The parties disagreed on the nature and timing of the work separation, with the employer asserting that claimant quit and claimant asserting she had not quit because she "didn't write the [requested resignation] letter." Cf. Audio Record ~ 12:00 to 15:30; 26:50 to 27:10. OAR 471-030-0038(2) (August 3, 2011) provides the standard for determining the nature of a work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). Here, the employer offered claimant a client job on May 21, 2017, which claimant declined that day after telling the employer she "took another job...was working for somebody else and couldn't work for [the employer] anymore." Although claimant argued that she did not quit because she "didn't write the [requested resignation] letter" she did not dispute that she told the employer on May 21 that she "couldn't work for [the employer] anymore" because she had accepted other work. Because claimant could have accepted a client job working for the employer on May 21 and going forward, and chose not to do so, the work separation was a voluntary leaving which occurred on May 21, 2017.

Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she 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, 13P3d 1027 (2000). Where, as here, an individual leaves work to accept an offer of other work, good cause exists if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the offered work is reasonably be expected to continue and pay 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) (August 3, 2011).

In this case, the record shows that the offer of other work was arguably definite and reasonably expected to continue, and at \$14.50 per hour paid a higher wage than what claimant had been receiving from the employer. However, that work was not expected to begin until June 15, 2017. Claimant therefore could have accepted the employer's offer of five days' work on May 21, and potentially other offers of work, until the work offered by the potential new employer was expected to begin on June 15. Thus, when claimant quit work on May 21, 2017, the work offered by the potential new employer was not expected to begin in the shortest length of time reasonable under claimant's circumstances. Because the offered

work at the new employer did not meet all of the requirements of OAR 471-030-0038(5)(a), claimant voluntarily left work without good cause.

Claimant failed to meet her burden to establish good cause for leaving work when she did. Accordingly, claimant is disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-91147 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 27, 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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