

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1101**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143629). Claimant filed a timely request for hearing. On August 17, 2017, ALJ Lohr conducted a hearing, and on August 23, 2017 issued Hearing Decision 17-UI-91002, affirming the Department's decision. On September 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. However, claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For that reason, EAB did not consider claimant's new information when reaching this decision.

**FINDINGS OF FACT:** (1) As of fall 2016, claimant was working for General Credit Services. Around that time, claimant sought part-time work to supplement her income from General Credit, and the employer, Mac's Diner hired claimant to work part-time as a hostess. Claimant worked approximately ten to twelve hours every other weekend for the employer, or an average of five to six hours per week. Claimant earned \$9.75 per hour working for the employer

(2) On March 15, 2017, claimant lost her job with General Credit. After claimant was no longer working for General Credit, she made it known to the employer that she wanted more hours of work. Shortly after, claimant began working for the employer approximately ten to twelve hours every weekend as a hostess. Claimant never turned down hours of work that the employer offered.

(3) Around the end of March 2017, claimant was in contact with the manager of a Sizzler Restaurant about possibly working for Sizzler as a hostess since she wanted more work hours than those she received from the employer. Claimant had worked for Sizzler on two previous occasions. At Sizzler, claimant would earn \$9.75 per hour. The manager at the Sizzler told claimant that as summer approached Sizzler would "easily" have more hours of work for her than the ten to twelve hours of work

she received from the employer. Audio at ~14:52. The manager at Sizzler did not provide a starting date for the position at Sizzler and did not state a definite number of hours that claimant would be working. Claimant told the manager for Sizzler that she did not want to leave her job with the employer unless and until she was definitely scheduled for work at Sizzler. The manager at Sizzler told claimant to contact him sometime around the first week of April 2017 for more definite information.

(4) Also around the end of March 2017, claimant told an employer representative that she was going to leave to accept a position at Sizzler, where she thought she would have more work hours. Claimant told the representative that she thought that her last day probably would be Easter Sunday, in mid-April 2017. The representative told claimant that the employer would have more hours for her since summer, the employer's busy season, was approaching. The representative also advised claimant that she probably would have more hours of work if she was willing to work in a server position. Claimant was not interested in a server position.

(5) As of Easter Sunday, the manager at Sizzler had not been able to include claimant in Sizzler's work schedule. The employer allowed claimant to continue working for the employer after Easter Sunday 2017. During the first two weeks in April 2017, claimant averaged approximately nineteen hours of work per week with the employer. During the final two weeks of April 2017, claimant averaged approximately seventeen hours of work per week with the employer.

(6) Sometime in mid to late April 2017, the manager at Sizzler contacted claimant and told claimant she was on its work schedule as of May 1, 2017. Claimant was scheduled for 29 hours of work at Sizzler during the first week of May. At that time, claimant told the employer that her last day was going to be April 30, 2017.

(7) On April 30, 2017, claimant voluntarily left work with the employer. Claimant's job at Sizzler began on May 1, 2017. Since beginning at Sizzler, claimant has averaged over 20 hours of work per week.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with good cause.

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, 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 leaves work to accept an offer of other work has good cause for leaving only if the offer is definite, the offered work is to begin in the shortest length of time deemed reasonable under the individual circumstance, 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).

In Hearing Decision 17-UI-91002, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ reasoned claimant did not show that the job offer she received from Sizzler was definite since Sizzler "did not give her an exact start date or offer specific hours" and "[a]lthough her hourly pay

rate remained the same, there is insufficient evidence to conclude claimant would have earned more weekly by accepting the job offer [from Sizzler].” Hearing Decision 17-UI-91002 at 2. We disagree.

The ALJ is correct that the initial job that the manager at Sizzler offered to claimant in late March 2017 was not sufficiently definite to meet the requirements of OAR 471-030-0038(5)(a) or to show that claimant would earn more from Sizzler than she earned with the employer. However, in *Early v. Employment Department*, 274 Or App 321, 329 fn 2, 360 P3d 725, 729 (2015), the Court of Appeals held that when events intervened after claimant gave an initial notice of an intent to leave work, the “appropriate time to evaluate whether claimant had good cause was not when claimant provided her notice, but when she actually quit the job.” The ALJ therefore erred in focusing on the job offer from Sizzler as it existed in late March 2017, when claimant notified the employer she planned to resign, and not as it was at the time claimant actually left work with the employer.

As of the April 20, 2017 date claimant left work with the employer, claimant knew her job with Sizzler would begin on May 1, what it would pay per hour, and how many hours she would be working. It therefore was a “definite” job offer within the meaning of OAR 471-030-0038(5)(a). Nothing in the record suggests that, as of the date claimant left work, the Sizzler job was not expected to continue, and it was to begin the day after claimant quit work for the employer, which was the shortest length of time reasonable under the circumstances. At the time claimant actually left work with the employer, claimant was scheduled to work 29 hours per week at Sizzler, and would earn \$282.75 per week from that work. Claimant reasonably expected based on the assurances of the manager at Sizzler that she would continue to work at least those hours and earn at least that compensation from Sizzler in subsequent weeks. Audio at ~13:34, ~14:12; Exhibit 1 at 1. The most hours that claimant had actually worked for the employer near in time to quitting was approximately 19 hours, when she earned \$185.25. Although the employer’s witness contended at hearing that, after the summer busy season began, claimant could expect to work 40 hours per week, nothing in the record shows that the employer offered claimant this number of hours as of the date she quit, guaranteed them to her in the future, or definitely offered her more than 19 hours of work per week at any time prior to her leaving. On this record, claimant met her burden to show as of the time she quit, the Sizzler job was definite, began in the shortest length of time reasonable, was reasonably expected to continue, and paid more than the job she left with the employer. As such, claimant showed good cause for leaving work when she did.

Claimant had good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-91002 is set aside, as outlined above.

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

**DATE of Service:** October 13, 2017

**NOTE:** This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete

**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](http://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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