

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1171**

*Affirmed*  
*Disqualification*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On August 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and assessing a \$1,770 overpayment (decision # 132511). Claimant filed a timely request for hearing. On September 27, 2017, ALJ Frank conducted a hearing, and on September 29, 2017 issued Hearing Decision 17-UI-93540, affirming the Department's decision. On October 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On May 30, 2017, claimant filed an initial claim for unemployment insurance benefits. That claim was determined valid with a weekly benefit amount of \$590.

(2) On June 16, 2017, Cascade Pacific Council/Boy Scouts of American offered claimant a job working as a cook at a summer camp. That job was to begin on July 1, 2017 and last until August 20, 2017. The job was to pay a total of \$1,330 for seven weeks of work, or \$190 per week. The job would also provide free room and board to claimant at the camp for the duration of the job. At that time, claimant contacted the Department and, after speaking with a representative, understood that the anticipated compensation she would receive from the employer would not jeopardize her continued receipt of unemployment benefits. On June 17, 2017, claimant accepted the job offer. On June 18, 2017, claimant signed a contract agreeing to the terms of employment.

(3) On July 1, 2017, claimant reported for her first day of work and learned that she was to work as head cook at the summer camp. Sometime around July 6, 2017, claimant spoke to an employer representative and understood that her paycheck would show that she had worked 40 hours for the \$190 she was paid weekly. Claimant became concerned that a record of showing that she had worked this number of hours would create problems for her continued receipt of unemployment benefits. In this conversation, claimant thought she communicated to the representative that she wanted the employer to consider her as volunteer rather than as a paid employee. However, the employer did not record a change in

claimant's employment status and did not cancel, rescind or revoke the employment contract that claimant signed on June 18, 2017.

(4) On around July 12, 2017, claimant spoke with the employer's director of camping programs, who was visiting the camp about, among other things, the number of hours she was working. At that time, claimant was working from 6:30 a.m. until 9:00 p.m. preparing meals and performing tasks related to meal preparation. The director said he would try to arrange for her workday to end by 7:00 p.m.

(5) On July 15, 2017, claimant sent an email to the camp director stating that she needed to "officially resign as head cook" due to the limited amount of time she had to accomplish "non-camp" responsibilities. Exhibit 2 at 5. In that email, claimant also cited various difficulties that had interfered with her ability to efficiently perform her duties as head cook. Claimant further stated that she wanted to return to the camp and periodically volunteer her services after her resignation.

(6) Claimant claimed and was paid a total of \$1,770 in benefits for the weeks of July 9, 2017 through July 29, 2017 (week 28-17 through 30-17), the weeks at issue. When claimant made her weekly claim reports for each of those weeks, she answered "No" to the question, "Did you quit a job last week?" Audio at ~11:00. Had claimant responded that she had quit a job, the Department would not have paid benefits to claimant until it had investigated and determined if claimant was eligible to receive benefits in light of that work separation.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause on July 15, 2017. Claimant was paid \$1,770 benefits to which she was not entitled for weeks 28-17 through 30-17 and is liable to repay that amount or to have it deducted from any future benefits otherwise payable to her.

**Work Separation.** Claimant took the position at hearing that she did not quit work with the employer during week 28-17 because at that time she considered herself to be volunteering, and not working for the employer as an employee. Audio at ~13:26, ~14:13. The first issue this case therefore presents is the nature of the work separation. The standard for determining how to characterize the nature of the work separation is set out at OAR 471-030-0038(2) (August 3, 2011). If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation was a voluntary leaving. OAR 471-030-0038(2)(a). If claimant was willing to continue to work for the employer for an additional period of time, but was not allowed to do so by the employer, the separation was a discharge. For purposes of determining if a work separation occurred, the term "work" means the continuing relationship between an employer and an employee.

The request that claimant made to the employer representative on July 6, 2017 about being a volunteer was not likely a clear communication to the employer. While claimant testified she commented to the representative on that day that she wanted to be "considered" a "volunteer," there was no suggestion from claimant's testimony that the representative responded in a way that indicated he understood this to be a request from claimant to change her status from that of an employee to a volunteer. Notably, claimant did testify that she and any employer representative discussed rescinding or canceling the employment contact that was signed on July 18, 2017 or that the employer representative made inquiry into the reasons underlying claimant's unusual request to continue performing the job duties of a head cook, but without compensation, when such a response would have been expected if the employer had

clearly understood claimant's allegedly intended meaning. Audio at ~31:39. As well, claimant's position that she had changed to a volunteer position on July 6, 2017, or even that she believed she had done so, is considerably undercut by the email she sent to the camp director on July 15, 2017, in which she referred to a "resignation" from the head cook position and said nothing about her alleged volunteer status. On this record, the preponderance of the reliable evidence shows that claimant's status vis-à-vis the employer was not likely changed from that of an employee to a volunteer on July 6, 2017, and that claimant likely resigned from what she understood was an employment relationship with the employer on July 15, 2017. Claimant's work separation was, most likely, a voluntary leaving as of July 15, 2017.

**Voluntary Leaving.** 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 suggested at hearing she might have quit work due to being required to work excessive hours for pay that, given the number of hours she was working, was allegedly less than minimum wage, and claimant mentioned in her resignation letter various issues with the kitchen that she found difficult to deal with. Audio at ~23:12, ~25:45, ~28:23. With respect to the compensation claimant received from the employer, in addition to claimant's pay check of \$190 per week, she also received in-kind compensation in the form of employer-provided room and board. Since neither party provided a value for the in-kind compensation, there is insufficient evidence in the record for us to conclude that the employer was actually compensating claimant in an amount that was less than minimum wage or at less than the usual wage for head cooks. Second, that claimant did not refer to any perceived inadequacy in the level of compensation she received in the resignation email of July 15, 2017, when she referred in that letter to various aspects of her job with which she was dissatisfied, suggests that she thought the pay she had received was adequate and, presumably, met minimum wage requirements. Third, when claimant brought up concerns over the hours she was working with the director of camping programs on July 12, 2017, the director addressed her concerns and sought to reduce her work shift by two hours per day. Audio at ~34:37. While claimant did not appear to have raised with the director of camping programs her level of compensation given the hours she was working, there was no evidence in the record suggesting or showing that he likely would not have addressed any concerns claimant had about the unlawfulness or adequacy of the compensation she was receiving. Because claimant did not show either that the level of compensation she was receiving was objectively inadequate or unlawful in light of the value of the employer-provided room and board, and did not show that any such efforts to redress the problem of inadequate or unlawful compensation with the employer short of quitting would likely have been futile, claimant failed to show that her situation was grave or that she had no reasonable alternative to leaving work when she did based on the compensation she received.

With respect to the non-compensation-related concerns that claimant cited in her resignation letter, such as learning the "efficiencies in a commercial kitchen," dealing with "broken warmers" and the "propane going down" none of them appears objectively grave. Exhibit 2 at 5. It also does not appear that

claimant actually perceived any of these concerns as grave since she indicated to the employer's representative on July 6, 2017 that she wanted to continue performing the duties of head cook on volunteer basis, when she already knew about these issues, and stated in her resignation letter that, as she was able, she wanted to return to the kitchen to volunteer, presumably to again experience those same difficulties. *Id.* On this record, claimant did not meet her burden to show that the non-compensation-related concerns she had were objectively grave reasons to leave work. Claimant did not show that any of the reasons she cited for leaving work constituted good cause for doing so.

**The Overpayment.** ORS 657.310(1) provides that an individual who receives any benefits to which the individual is not entitled because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact is liable to repay the amount of the benefits or to have the amount of the benefits deducted from any future benefits otherwise payable to the individual. An individual who was separated from work as a result of a voluntary leaving without good cause is disqualified from receiving unemployment insurance benefits. ORS 657.176(2)(c).

Claimant did not dispute that she received \$590 in benefits for each of weeks 28-17 through 30-17, or a total of \$1,770 in benefits. Claimant did not dispute that she would not have been paid those benefits had she reported that she voluntarily left work on July 15, 2017, or during week 28-17. While claimant might have innocently thought she did not need to report that she was separated from work on July 15, 2017, it remains that she was paid benefits for weeks 28-17 through 30-17 based on her failure to report that she voluntarily left work on July 15, 2017 which, as concluded above, was not for good cause. Regardless of claimant's knowledge or intent, the representation that she did not have a work separation during week 28-17 was incorrect and claimant is liable to repay the \$1,770 in benefits she received as a consequence of that representation, or have those benefits deducted from any future benefits otherwise payable to her.

**DECISION:** Hearing Decision 17-UI-93540 is affirmed.

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

**DATE of Service:** November 3, 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](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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