

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1310**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not refuse an offer of work from the employer without good cause (decision # 63147). The employer filed a timely request for hearing. On October 20, 2017, ALJ Buckley conducted a hearing, and on October 25, 2017 issued Hearing Decision 17-UI-95343, affirming the Department's decision. On November 13, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments when reaching this decision to the extent they were relevant and based upon the record. Claimant, alone and through the employer, appears to be requesting in some way to be permitted to cancel her claim, arguing that she never intended to claim benefits. Although ORS 657.266(4) allows claimants to cancel initial and amended determinations under some circumstances, they are prohibited from canceling them if benefits have been paid on the claim, and it appears that benefits have been paid to claimant for at least two weeks. It therefore appears that claimant is not entitled to cancel her claim.

**FINDINGS OF FACT:** (1) Platinum Choice Staffing, Inc. employed claimant as a licensed practical nurse, last until June 7, 2017. The employer is a staffing agency and assigned claimant to limited-duration assignments with its clients. Claimant's last assignment was in St. Helens, Oregon and was scheduled to end on June 7, 2017.

(2) At some point prior to May 31, 2017, the employer communicated to claimant that one of its clients had an open assignment. On May 31, 2017, the employer contacted claimant asking her to "[p]lease let me know when you are available to start another assignment so I can market you out to all applicable clients." Exhibit 1. Claimant told the employer that she had planned a vacation from June 8, 2017 through June 26, 2017, and she was not interested in picking up a new assignment until June 27, 2017.

(3) Although the employment relationship between claimant and the employer was of sufficient duration that they shared a mutual understanding of most employment terms accompanying an assignment, the employer understood that claimant was not interested in working again until her vacation ended. The

employer therefore did not specify the terms of the new assignment to claimant, or specify what date claimant would begin working if she accepted that assignment.

(4) Based upon claimant's report to the employer that she would not be "back and ready to go" until June 27<sup>th</sup>, the employer refrained from providing claimant with a new assignment until that date. Exhibit 1. Had claimant not reported to the employer she was not available for a new assignment until June 27<sup>th</sup>, the employer probably would have had a new assignment for claimant prior to that date.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not refuse an offer of work from the employer without good cause.

ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if claimant failed without good cause to accept suitable work when offered. For the disqualification to apply, Department policy requires that the offer of work have been "bona fide," including that the claimant was told or understood "[t]he date of the job offer" and "[t]he details of the job (type of work, duties, hours and days, rate of pay, start date, etc.)." Audio recording at ~ 16:30; Oregon Employment Department, UI Benefit Manual §450 (Rev. 04/01/10).

Although there appears to be no dispute that the employer at all relevant times had available assignments, the record in this case fails to establish that the employer made a "bona fide" job offer to claimant that she then refused. The employer had communicated with claimant, knew she was taking a vacation, and therefore did not offer her any work until after her vacation ended and she reported that she was "ready to go." In the absence of evidence that a bona fide job offer was made, we cannot conclude that claimant refused an offer of work, much less that she did so without good cause. Claimant is, therefore, not disqualified from receiving benefits for refusing a job offer from the employer.

We note that the evidence gathered during the October 20<sup>th</sup> hearing strongly suggests that claimant might not have been eligible for benefits between June 8<sup>th</sup> and June 26<sup>th</sup> on different bases than a job refusal, that is, her decision to take a vacation, her possible absence from her labor market and her work seeking activities while on vacation, and we note that the Department might, either previously or in the future, adjudicate claimant's eligibility to receive benefits during the relevant time period. By law, however, our jurisdiction in this case is limited to the question of whether claimant should be disqualified from benefits for having refused the offer of a specific job by the employer without good cause, and the record does not support such a disqualification.

**DECISION:** Hearing Decision 17-UI-95343 is affirmed.

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

**DATE of Service:** December 12, 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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