

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0084**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104050). Claimant filed a timely request for hearing. On January 9, 2018, ALJ Amesbury conducted a hearing, and on January 10, 2018, issued Hearing Decision 18-UI-100631, affirming the Department's decision. On January 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) JWM Staffing, a division of Resource Staffing Services Incorporated and a temporary staffing agency, employed claimant as an order-filler for one of its clients from October 16, 2017 to October 18, 2017.

(2) Claimant's assignment with the employer's client was a full-time, 90 day, temporary-to-hire position meaning the assignment was to last no more than 90 days, after which the employer's client would decide whether to hire claimant as its own employee. The assignment paid \$14 per hour.

(3) On October 18, 2017, claimant received a job offer from another employer. The offer also was for a full-time, 90 day temporary to hire position but which paid \$16 per hour, with possible overtime work and would start on October 19, 2017. After two days working for the employer, claimant accepted the new job offer and gave the employer notice that he was quitting, effective immediately, on October 18, 2017, before his shift started.

(4) On October 19, 2017, claimant began work for the new employer.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude that claimant voluntarily quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). In applying OAR 471-030-0038(4), for purposes of determining “good cause,” an individual who leaves work to accept an offer of other work has shown good cause for leaving only if, among other things, the offered work was “reasonably . . . expected to continue.” OAR 471-030-0038(5)(a).<sup>1</sup>

We agree with the ALJ that claimant received a definite offer of work that paid more than the work he left and was expected to begin in the shortest time reasonable under the circumstances. However, the ALJ also concluded that claimant quit his job with the employer without good cause, reasoning,

...the offer was only for temporary full-time work for 90 days, with the expectation of an offer for a permanent job after that. As a temporary position, claimant’s new job was not expected to continue, and under OAR 471-030-0038 (5)(a), because the new job was not expected to continue, good cause did not exist for leaving the original job.

Hearing Decision 18-UI-100631 at 2. We disagree with the ALJ’s conclusion.

The ALJ’s analysis omitted reference to the Department’s interpretation of that portion of its own rule that reads, “...the offered work must reasonably be expected to continue.” See, Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10)(“A person who left a temporary job to accept another temporary job could establish good cause if the new work, albeit temporary, was expected to last longer than the temporary work left.”). Here, although the position left and the position accepted were both 90-day temporary-to-hire positions, claimant had worked for the employer 2 days before quitting for the new job, and consequently the new job was expected to last at least 90 days while the position left was scheduled to expire 88 days after claimant left. Although the new position may not have been a “permanent” one, as the ALJ concluded, under the Department’s rule, more likely than not, it was “reasonably expected to continue.” Accordingly, on this record, claimant voluntarily left work with good cause and is not disqualified from receiving benefits on the basis of his work separation.

**DECISION:** Hearing Decision 18-UI-100631 is set aside, as outlined above.<sup>2</sup>

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

**DATE of Service: February 22, 2018**

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<sup>1</sup> OAR 471-030-0038 (5) provides that in applying section (4) of this rule:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay: (A) An amount equal to or in excess of the weekly benefit amount; or (B) An amount greater than the work left.

<sup>2</sup> 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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