

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0246

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant refused an offer of work from the employer without good cause (decision # 142011). Claimant filed a timely request for hearing. On February 14, 2018, ALJ R. Frank conducted a hearing, and on February 16, 2018 issued Hearing Decision 18-UI-103450, affirming the Department's decision. On March 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 6, 2017, Express Employment Professionals offered claimant one day of work as an assembly worker for its client. Claimant was qualified to perform the work. The work was going to be during the day shift on December 7, 2017, was located in Redmond, Oregon, which was within claimant's labor market, and paid \$13.00 per hour. The median rate of pay for that type of work in claimant's labor market was \$12.91 per hour.

(2) Claimant had not worked for at least a month and initially decided to accept the job. Afterwards, he thought about the situation. He thought Redmond was too far away. Claimant had an undependable water pump and was concerned that his car could break down. He had gas money to drive to the job, but then would not have gas between the date of the job and when he thought he would get paid a week later. He concluded it was not worth it to take the job for only one day of work.

(3) On December 7, 2017, claimant did not report to work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant refused an offer of work without good cause.¹

ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if an individual fails without good cause to accept suitable work when it is offered. "Good cause" in that context "is

¹ The Department adjudicated this case as a job refusal under ORS 657.176(2)(e). On this record, however, and since claimant admitted initially accepting the job in this case, the matter might more appropriately have been adjudicated as a voluntary leaving via job abandonment under ORS 657.176(2)(c) and an availability case under ORS 657.155(1)(c).

such that a reasonable and prudent person, exercising ordinary common sense, would refuse to . . . accept suitable work when offered by the employer”; in determining disqualification, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195. OAR 471-030-0038(6) (January 11, 2018).

The employer extended to claimant a bona fide offer of work, with established terms of employment, and with pay higher than the median rate of pay in claimant’s labor market. Although claimant thought Redmond was too far away given his transportation limitations, Redmond was within claimant’s labor market as it was established by the Employment Department.² On this record, the work offered to claimant was suitable for him.³

Although claimant initially told the employer that he accepted the job offer, he subsequently tacitly rejected the job offer when he chose not to report to the job assignment. The question is, for purposes of this case, whether claimant had “good cause” to reject the job offer. We conclude he did not. Although claimant was understandably concerned about his vehicle’s condition and not having much gas money, at the time he rejected the offer claimant had a working vehicle and gas money to commute to the job’s location. We cannot say under the circumstances that a reasonable and prudent person in claimant’s position would have refused an offer of suitable work rather than accept a day of paid work after a period of unemployment. Claimant therefore refused the offer of work without good cause, and is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 18-UI-103450 is affirmed.

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

DATE of Service: April 4, 2018

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.

² “An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section.” OAR 471-030-0036(6)(a) (February 23, 2014).

³ The record shows that the work was likely suitable for claimant because the offered work did not pose a risk to claimant’s health, safety and morals, he did not lack the fitness or training for the job, the duties were not beyond his experience, the work paid more than the median wage in claimant’s labor market, he had not worked in a couple of months, and the work was within his labor market. *See* ORS 657.190. Additionally, the position offered to claimant, on this record, was not vacant due to a labor dispute, the remuneration or other conditions were not substantially less favorable to claimant than those prevailing for similar work in the locality, and claimant was not required to join or resign from a union as a condition of employment. *See* ORS 657.195.

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