

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0249**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85357). Claimant filed a timely request for hearing. On March 1, 2018, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on March 2, 2018 issued Hearing Decision 18-UI-104367, affirming the Department's decision. On March 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Nike IHM, Inc. employed claimant from December 4, 2017 until December 11, 2017 as a plastics components operator.

(2) Prior to December 4, 2017, claimant applied online for a job with the employer. An employer representative called claimant and, during the call, asked claimant what wage she required. Claimant told the employer representative that she required \$15 per hour. The representative replied, "Oh, well, that's what we pay. We can get you \$15 an hour." Audio Record at 13:43 to 13:50. The employer told claimant she would be working a 12-hour night shift. Claimant subsequently had an in-person interview, during which the pay rate was not discussed. The employer offered claimant a position, and claimant accepted it.

(3) On December 4, 2017, claimant began orientation with the employer. On December 5, the second day of orientation, claimant learned that the employer would pay her \$13.65 per hour for the 12-hour night shifts. Claimant was dissatisfied with the wage rate and that it was less than what the employer representative told her the wage rate would be during her initial telephone call with the employer. Claimant was also dissatisfied with the employer's pay rate for paid holidays because it was equivalent to 8 hours of day shift work, which paid less at \$12.35 per hour. Claimant continued to attend the orientation on December 6 and 7.

(4) On December 8, 2017, claimant began working at the employer's plant. Her shift was from 6:00 p.m. to 6:00 a.m. During her shift, the employer representative instructed claimant to clock out during her three fifteen-minute rest breaks and her 30-minute meal break each shift, and told claimant that the rest breaks and the meal break were unpaid. Claimant asked her trainer about the break policy, and she told claimant she would not be paid for time she was not working. Claimant was dissatisfied that she was to be paid for only 10.75 hours during a 12-hour shift.

(5) On December 11, 2017, claimant quit work because she was dissatisfied with the wage and hour terms of her employment.

**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 quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

To the extent claimant quit work because she was dissatisfied with the wage rate and holiday pay rate, on this record, with the limited inquiry from the ALJ into whether the work was suitable<sup>1</sup> for claimant, we conclude that claimant did not quit work with good cause. Although the recruiter told claimant when the employer initially called claimant that the employer paid \$15 per hour, the record falls short of showing there was a contractual promise to pay that amount. During claimant's interview, when the terms of employment would typically be disclosed, the employer did not disclose the details of claimant's pay rate, and claimant did not ask. Moreover, the record does not show that the costs associated with working would exceed claimant's earnings, or that no reasonable and prudent person would have continued to work for the employer because the pay rate was too low or the holiday pay benefit for holidays when claimant did not work was too low. We also conclude that claimant did not have good cause to quit because the employer did not provide a paid *meal* period, which, absent a contractual obligation, is not required to be paid by law.

However, to the extent claimant left work because the employer failed to pay claimant for the three fifteen-minute *rest* breaks it provided during her 12-hour shift, we conclude that claimant had good cause to quit work. Based on this record, it appears that as of the time that claimant left work, the employer was violating Oregon law requiring the employer to provide its employees with a paid rest period of not less than ten minutes for each period of four hours or major part of four hours in which the employee worked. ORS 653.261; OAR 839-020-0050(1)(b) (January 1, 2014). Here, the

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<sup>1</sup> ORS 657.190 provides: "In determining whether any work is suitable for an individual, the [Department] shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual."

uncontroverted evidence in the record shows that the employer required claimant to clock out during her rest breaks, and did not pay claimant for any of the rest break time, although the breaks occurred three times during her 12-hour shift. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense would continue to work indefinitely for an employer, like that here, that instructs its employee to clock out and receive no pay for time that should be paid time. There is no evidence that this was anything but an ongoing practice in the plant where claimant worked. Moreover, we conclude that a reasonable and prudent person in claimant's circumstances, as a new hire who did not apparently know that the employer's rest break practice violated Oregon law, would have quit rather than question the employer's practice beyond her trainer or wait for the employer to change its practice. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (claimant had good cause to leave work when wage dispute over employer's illegal practices was ongoing and not likely to stop); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990) (an employer's repeated wage violations was good cause for claimant to leave work because "[n]o one should be expected to continue working for an employer who pays with bad checks").

Claimant had good cause to leave work when she did. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 18-UI-104367 is set aside, as outlined above.

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

**DATE of Service:** April 5, 2018

**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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