

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0334**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 95320). Employer filed a timely request for hearing. On March 27, 2018, ALJ Scott conducted a hearing, and on April 2, 2018 issued Order No. 18-U106462, concluding claimant voluntarily left work without good cause. On April 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant provided EAB with new information concerning the overtime income she would receive with the other work she accepted, namely, that “the ALJ did not include [claimant’s] 10-12 guaranteed overtime hours in her income calculation [for the new work].” Claimant’s Written Argument. The new information is that the 10-12 overtime hours were “guaranteed.” Under OAR 471-041-0090(2) (August 1, 1999), EAB may consider new information if the information is material to EAB’s determination, and if factors or circumstances beyond the party’s reasonable control prevented the party from offering the information into evidence during the hearing. Claimant’s new information is material to a determination of whether or not she had good cause to leave work to accept an offer of other work. The ALJ did not specifically ask claimant if the overtime hours she was promised were guaranteed such that they would be included as part of her income. *See* Audio Record at 12:08 to 12:26. Because the ALJ failed to ask claimant that information, and claimant, an unrepresented participant at the hearing, might not otherwise have known to provide the information in the absence of a specific question, we conclude that claimant was prevented by factors or circumstances beyond her reasonable control from presenting material evidence during the hearing. Claimant’s additional evidence is, therefore, admitted into the record as EAB Exhibit 1. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the noticed fact will remain in the record at EAB Exhibit 1.

**FINDINGS OF FACT:** (1) Fairway Auto Body Repair employed claimant from August 16, 2017 until December 29, 2017, last as a service advisor.

(2) Claimant earned \$41,000 per year, plus commission, during 2017. She earned commission of \$7,474.68 during 2017.

(3) On December 18, 2017, the owner of Easley Auto Parts offered claimant a permanent job to begin on January 2, 2018. Claimant did not have to pass any tests or background checks for Easley Auto Parts before she began work on January 2. Easley Auto Parts promised to give claimant 40 regular hours of work per week, plus a guaranteed 10 to 12 hours of overtime each week, at a starting hourly pay rate of \$12 per hour.<sup>1</sup> EAB Exhibit 1.

(4) On December 19, 2017, claimant gave the employer notice that she would quit work on December 29, 2017 to accept an offer of other work. Claimant continued working until December 29, and began work at Easley Auto Parts on January 2, 2018.

(5) Claimant's weekly benefit amount was \$506.<sup>2</sup>

**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 she (or he) 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 her employer for an additional period of time.

OAR 471-030-0038(5)(a) further provides that, if an individual left work to accept an offer of other work, good cause existed if the offer was definite, the work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the offered work was reasonably expected to continue, and the work paid an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work left.

The ALJ concluded that claimant did not have good cause to voluntarily quit her job with the employer to accept an offer of work under OAR 471-030-0038(5)(a) because the offered work from Easley Auto Parts paid less than the work with the employer and less than her weekly benefit amount of \$506. Order No. 18-UI-106462 at 3. We disagree.

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<sup>1</sup> The record is insufficient to determine if claimant was entitled to overtime wages pursuant to the South Carolina Wage Payment Act, S.C. Code Ann. §§ 41-10-10 *et seq.* Therefore, we presume claimant earned \$12 per hour for all the hours she worked, including overtime.

<sup>2</sup> We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

In this case, the offer was definite. The uncontroverted evidence is that claimant and Easley Auto Parts both understood as of December 18, 2017 that claimant would begin work at Easley Auto Parts on January 2, 2018 and work full time with an additional 10 to 12 hours per week of overtime hours at a rate of \$12 per hour. At the time of the offer, there were no contingencies or elements of a job offer that appear to be missing from the agreement between claimant and Easley Auto Parts. The work was also to begin in the shortest length of time reasonable under the circumstances. The work in this case was reasonably expected to continue because, on this record, there was nothing in the offer of work from Easley Auto Parts that would have led claimant or any reasonable and prudent person to believe that the position was a short-term position or was of finite duration. We therefore conclude that the preponderance of the evidence suggests the offered work was reasonably expected to continue.

Unlike the ALJ, however, we conclude that the record shows claimant also has met her burden to show that the offered work paid in excess of claimant's weekly benefit amount of \$506. The ALJ concluded claimant would earn \$480 per week for 40 hours of work per week at a rate of \$12 per hour. However, the ALJ did not include claimant's overtime hours when calculating claimant's weekly income. Claimant's weekly income with Easley Auto Parts was reasonably expected to be \$600 including 40 hours and an additional 10 overtime hours paid at \$12 per hour. Thus, the offered work paid in excess of claimant's weekly benefit amount of \$506.

We conclude that claimant voluntarily left her job with the employer to accept a definite offer of work, and that the offer was for work that started in the shortest time reasonable under his circumstances, was reasonably expected to continue, and paid more than her weekly benefit amount. Claimant therefore left work with the employer with good cause, and is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 18-UI-106462 is set aside, as outlined above.<sup>3</sup>

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

**DATE of Service:** May 8, 2018

**NOTE:** You may appeal this order 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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<sup>3</sup> This decision reverses a hearing order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.