

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0710

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144557). Claimant filed a timely request for hearing. On June 20, 2018, ALJ Snyder conducted a hearing, and on June 28, 2018 issued Order No. 18-UI-112264, affirming the Department's decision. On July 17, 2018, the Department filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the Department submitted a written argument. EAB considered the Department's argument to the extent it was based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Robert Lloyd Sheet Metal employed claimant as a project manager from March 21, 2015 until April 27, 2018.

(2) Claimant worked forty hours per week for the employer at an hourly wage of \$23.00.

(3) On or about April 23, 2018, another employer offered claimant a full time job, 40 hours per week, at an hourly wage of \$20.00 with a raise after six months. The offer was definite, as claimant did not have to pass any tests or background checks, and he was scheduled to begin work on April 30, 2018. Claimant accepted the job offer.

(4) On Friday, April 27, 2018, 2018, claimant gave the employer notice that he was quitting work after that day to accept an offer of other work. Claimant continued working on April 27 until the employer sent him home.

(5) Claimant's weekly benefit amount was \$604.¹

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) (January 11, 2018). 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 leaves work to accept an offer of other work, good cause exists 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 and 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.

In Order No. 18-UI-112264, the ALJ concluded that claimant voluntarily left work without good cause because he left his job with the employer to accept an offer of other work that paid \$3 less per hour than the work with the employer. Order No. 18-UI-112264 at 2. While we agree that the offered work paid less than claimant's work with the employer, we disagree that claimant left work without good cause.

In this case, there was no dispute that the offer of other work was definite at the time it was made and accepted and reasonably expected to continue. Nor was there any dispute that the new work was scheduled to begin in the shortest period of time reasonable under the circumstances, as claimant gave the employer notice on Friday, April 27, 2018 that he was quitting that day, and he was scheduled to begin work with the new employer on Monday, April 30, 2018. Although the offered work was to pay claimant less per hour than the work left, it was still expected to pay an amount in excess of claimant's weekly benefit amount of \$604 (40 hours x \$20 per hour = \$800/week), a factor the ALJ apparently failed to consider.

Accordingly, under OAR 471-030-0038(5)(a), claimant left his job with the employer to accept other work with good cause and is not disqualified from receiving unemployment insurance benefits because of this work separation.

¹ 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.

DECISION: Order No. 18-UI-112264 is set aside, as outlined above.²

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

DATE of Service: August 17, 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.

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² 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.