

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0744

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 22, 2018 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed without good cause to accept suitable work when offered (decision # 134338). Claimant filed a timely request for hearing. On July 17, 2018, ALJ Frank conducted a hearing at which the employer did not appear, and on July 25, 2018 issued Order No. 18-UI-113813, affirming the Department's decision. On July 28, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that included information not contained in the hearing record, including exhibits the ALJ did not receive in advance of the hearing as well other information in response the decision reached in Order No. 18-UI-113813. OAR 471-041-0090 (October 29, 2006) allows EAB to consider information presented for the first time on review if the party offering it shows that it was prevented from offering the information at the hearing due to factors or circumstances beyond its reasonable control. With respect to the exhibits the ALJ did not receive, while claimant may have inadvertently not addressed them for delivery to the ALJ through the Office of Administrative hearings, it was within her reasonable control to have done so had she exercised care. In addition, claimant did not show that that it was beyond her reasonable control to have offered at hearing the documents that she is now offering to EAB in response to Order No. 18-UI-113813. Claimant's request to have EAB consider new information is therefore denied. However, had EAB considered the new information that claimant sought to present by way of her written argument, EAB's decision in this matter would remain the same, for the reasons discussed below.

FINDINGS OF FACT: (1) Sometime before May 22, 2018, claimant was separated from employment as a paralegal at a law firm located in Portland, Oregon. At that job, claimant earned base pay of \$60,000 per year and, with overtime, approximately \$62,000 per year. At that job, claimant also had four weeks paid time off per year.

(2) Sometime before May 22, 2018, claimant interviewed for work as a paralegal with Haglund Kelley, a law firm in Portland, and also with the Portland City Attorney's Office. On May 22, 2018, Haglund Kelley offered claimant a job. The paralegal job with Haglund Kelley paid \$56,000 per year and had two

weeks paid time off per year. As of May 22, 2018, the Portland City Attorney's Office had not offered a job to claimant.

(3) For 2018, the Oregon Labor Market Information System, a wage survey conducted by the Department found that the median wage for a paralegal in claimant's labor market locality was \$56,347 per year. 90 percent of \$56,347 is \$50,712.

(4) On May 25, 2018, claimant turned down the paralegal job with Haglund Kelley. Claimant turned it down because she considered its pay inadequate to her skill level, it provided two weeks less personal time off than had her previous employment, which she thought unacceptably reduced its effective rate of pay and she was anticipating receiving a better job offer from the Portland City Attorney's Office. The Portland City Attorney's Office ultimately did not offer a job to claimant.

(5) On June 1, 2018, claimant filed a claim for unemployment insurance benefits. When filing her claim, claimant stated that she had refused a job offer from Haglund Kelley.

CONCLUSIONS AND REASONS: Claimant failed without good cause to accept suitable work from Haglund Kelley when it was offered to her.

ORS 657.176(2)(e) required a disqualification from unemployment insurance benefits if claimant failed without good cause to accept suitable work when offered. "Good cause" for refusing work means that a reasonable and prudent person, exercising ordinary common sense, would have refused to accept that suitable work and in determining whether a claimant should be disqualified from benefits based on a job refusal consideration shall be given to the suitable work factors and exceptions set forth in ORS 657.190 and 657.195. OAR 471-030-0038(6) (January 11, 2018). In determining whether work is suitable for a claimant, consideration should be given to the degree of risk involved to the health, safety and morals of claimant, the physical fitness and prior training, experience and prior earnings of claimant, the length of unemployment and the prospects of securing local work in the customary occupation of claimant and the distance of the available work from the residence of claimant. ORS 657.190(1).

Work shall not be deemed suitable and benefits shall not be denied for refusing to accept work if, among other things, the remuneration, hours or other conditions of the work offered are substantially less favorable to claimant than those prevailing for similar work in the locality. ORS 657.195(1)(b). OAR 471-030-0037(2) (January 11, 2018) provides that if inadequate rate of pay was one of the reasons for refusing to accept work, the work is not suitable if the rate of pay is substantially less than the rate of pay prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the median rate of pay for similar work in the locality. The median rate of pay prevailing in a locality shall be determined by the employees of the Department adjudicating office using available research data compiled by the Department.

At hearing, claimant's reason for refusing the job offer from Haglund Kelley reduced to her perception that its pay was inadequate and she thought that she would shortly be receiving a better job offer from the Portland City Attorney's Office. While claimant argued that she had specialized skills and experience exceeding those of a typical paralegal and deserved more pay than Haglund Kelley offered, she did not dispute that the median rate of pay for a paralegal in her locality and labor market in 2018 was \$56,347. Nor did claimant suggest she was not looking for work as a paralegal, or was seeking work

any other capacity than as a paralegal. Because OAR 471-030-0037(2) provides the standard for determining whether pay makes a job unsuitable, the Department's compilation for 2018 determined that the prevailing rate of pay for a paralegal in downtown Portland was \$56,347 and the pay for the paralegal job offered by Haglund Kelley exceeded the prevailing pay, the Haglund Kelley job was not unsuitable due to inadequate pay. As well, to the extent that claimant might have refused the Haglund Kelley job because she wanted to remain available to accept what she thought would be a job with better pay or benefits from the Portland City Attorney's Office if it was offered, that possibility was not good cause for claimant to turn down the job with Haglund Kelley. A reasonable and prudent person would not have turned down a firm offer for suitable work based on the mere hope that another employer might offer a job that might have better pay or other conditions.

Claimant refused without good cause to accept suitable work. Claimant is disqualified from benefits based on this refusal.

DECISION: Order No. 18-UI-113813 is affirmed.

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

DATE of Service: August 29, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.