

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0882

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits for the weeks of June 10 through July 7, 2018, which were during the period between two academic years (decision # 153215). Claimant filed a timely request for hearing. On August 22, 2018, ALJ Murdock conducted a hearing, and on August 23, 2018 issued Order No. 18-UI-115505, concluding claimant was not eligible to receive benefits for the weeks of June 10 through August 25, 2018, which were during the period between two academic years. On September 8, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted an argument that contained information that was not part of the hearing record. Claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Under OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On November 10, 2014, Reed College hired claimant as a custodian. Reed College was an educational institution. Claimant worked year-round for Reed through 2017. During the period January 1, 2017 through December 31, 2017, Reed was claimant's only employer. During at least one week in academic year 2017-2018, claimant earned more than \$462.

(2) Sometime before January 19, 2018, claimant applied for work with another employer, ASI. As of the morning of January 19, 2018, ASI had indicated to claimant that it was going to hire him, but had not provided a starting date for his new employment. Claimant was confident that he would start his new job sometime during the upcoming work week of January 22 through January 26, 2018. As of the morning of January 19, 2018, ASI had also indicated to claimant that his hire was contingent on passing a criminal background check and a Department of Motor Vehicles (DMV) driving record check, but it had not yet completed those checks. Claimant knew his own background and driving record and was confident that he would pass both checks.

(3) On Friday, January 19, 2018, in the morning, claimant resigned from his position as a custodian at Reed. Had claimant not quit his position with Reed, he could have continued working as a custodian for Reed indefinitely. At the time he left work with Reed, ASI had not informed claimant of the date when his employment with it would start and had not notified claimant that he had passed the criminal background and the DMV driving record checks. During the evening of January 19, 2018, after claimant had quit work with Reed, ASI notified claimant that he had passed the background and driving record checks and that his employment with it would start on Monday, January 22, 2018.

(4) On June 12, 2018, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was determined valid with a weekly benefit amount of \$462. The base year for claimant's claim was January 1, 2017 through December 31, 2017. Claimant claimed benefits for the period June 10, 2018 through August 11, 2018 (weeks 24-18 through 32-18).

(5) The 2018 summer recess period for Reed began on May 10, 2018 and ended on August 24, 2018 (weeks 19-18 through 34-18). That weeks that claimant claimed benefits commenced during that summer recess period.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive benefits during the period of June 10, 2018 through August 25, 2018.

Because claimant's benefits were based on wages he earned from an educational institution, his claim may be subject to special standards. ORS 657.221(1) provides that if an individual's benefits are based on services performed in other than an instructional, research or principal administrative capacity for an educational institution or an institution of higher education, those benefits are payable on the same terms and conditions applicable to other claims. However, ORS 657.221(3) creates an exception and provides that, with respect to the services described in ORS 657.221(1), benefits shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is reasonable assurance that such individual will perform such services or any services described in ORS 657.167(1) in the period immediately following such vacation or holiday recess. OAR 471-030-0074(2) and (2)(b) (April 29, 2018) provide that ORS 657.221 applies when the individual was not unemployed as defined by ORS 657.100¹ during the relevant period, which is the prior academic year or term when the week(s) claimed commence during a customary recess period between academic terms or years unless there is a specific agreement. OAR 471-030-0074(3) states that ORS 657.221 applies regardless of whether or not the individual performed services only during an academic year or in a year-round position. OAR 471-030-0075(4) (April 29, 2018) provides that an individual who leaves work for good cause, as defined by OAR 471-030-0038 (January 11, 2018), does not have reasonable assurance with the employer from whom the person left work.

Claimant's claim was based on wages he earned from only one educational institution, Reed College, for performing non-instructional, non-research, and non-administrative work. As of the date of the hearing, claimant had claimed benefits for weeks 24-18 through 32-18, which commenced and were within Reed's customary summer recess period between academic years. Claimant was employed by Reed and

¹ ORS 657.100(1) states that an individual is deemed "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is paid or payable, or in any week of less than full-time work if the remuneration paid or payable is less than the individual's weekly benefit amount.

earned more than his weekly benefit amount in at least one week during academic year 2017-2018, the academic year preceding the summer recess period. Because claimant could have continued working indefinitely for Reed at the time he quit, he had reasonable assurance of working for Reed after the summer recess ended unless he had “good cause” for leaving his position with Reed.

“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). If a claimant leaves work to accept an offer of other work, good cause exists only if the offer is definite and the work is to begin in the shortest time deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a).

Claimant testified that he left work with Reed to accept an offer of work with ASI. However, claimant did not show that ASI’s offer of new work was “definite” within the meaning of OAR 471-030-0038(5)(a). The Department’s Benefits Manual states that to satisfy the requirement of definiteness, an offer generally must include an expected starting date. Unemployment Insurance Benefits Manual (April 1, 2010 rev.) Ch. 400 §442B; *see also* Appeals Board Decision 2017-EAB-0551, June 6, 2017 (citing the Manual and holding that offer of work was not definite and did not constitute good cause for leaving prior work when claimant had not been given a specific start date, even though claimant believed the work would start on a particular date); Appeals Board Decision 2017-EAB-0127, February 24, 2017 (citing the Manual and holding that claimant did not have good cause to quit to accept a job offer that did not have a start date as of the time claimant left work); Appeals Board Decision 2015-EAB-0298, May 5, 2015 (citing the Manual and holding that an offer lacking a certain start date is not a definite offer of new work under OAR 471-030-0038(5)(a)). While claimant testified that ASI had “guaranteed” that he had a job with it and he was confident that the job would begin sometime during the upcoming work week of January 22 through 26, 2018, ASI had not given him a start date at the time he notified Reed that he was quitting. Audio at ~15:51. For this reason, ASI’s job offer to claimant does not appear to have been sufficiently definite as of the time he left work to constitute good cause for leaving work within the meaning of OAR 471-030-0038(5)(a).

In addition, the Department’s Benefits Manual states that a job offer is “definite” only if it was “not contingent on anything” at the time claimant left work, including claimant’s performance on required tests or checks for which the results were not known at the time claimant quit. Unemployment Insurance Benefits Manual (April 1, 2010 rev.) Ch. 400 at §442B; *see also* Appeals Board Decision 2018-EAB-1078, March 22, 2018 (citing the Manual and holding that a job offer was not “definite” at the time claimant quit work when the offer was conditioned on passing a background check and claimant did not know if he had passed at the time he resigned); Appeals Board Decision 2016-EAB-0252, April 4, 2016 (citing the Manual and holding that claimant did not have good cause to quit to accept a job offer that was conditioned on passing a test and the results of the test were not known at the time claimant quit). While claimant testified that he knew he would pass the background and DMV check on which the job offered by ASI was contingent because he was aware of his own history, he had not received notice from ASI as of the time he left work with Reed that he had successfully passed both checks and had fulfilled that contingency. Audio at ~15:57, ~17:42, ~18:42. For this second reason, ASI’s job offer to claimant does not appear to have been sufficiently definite at the time he left work to constitute good cause for leaving within the meaning of OAR 471-030-0038(5)(a).

Even were it to be found that ASI's offer of work to claimant was sufficiently definite to meet the standard for showing good cause despite lacking a specific start date and results on the background and DMV checks, the ASI job offer that claimant described would still fail to constitute good cause for him to leave work. It is the Department's position as set forth in the Department's Benefits Manual that the time that a claimant does not work between leaving one job and starting a new job must be shown to be the shortest amount of time that is deemed reasonable under the particular circumstances.

Unemployment Insurance Benefits Manual (April 1, 2010 rev.) Ch. 400 at §442B. The Manual states that the time gap that a claimant envisions occurring between the two jobs must be evaluated to ensure that claimant "must not have left the old job too soon" and that "[t]he amount of time claimant takes between the old and new work should be out of necessity" and "should be for a reasonable period of time only." *Id.* Although claimant actually began working for ASI on January 22, 2018, as of the time he left work, claimant knew only that he was going to start his new job with ASI sometime within the next work week. It does not appear on its face that necessity would have required claimant to take time off work between ending the job at Reed and beginning the job at ASI, and there was insufficient evidence to show that circumstances existed under which an up to one-week hiatus between the two jobs would have been necessary. Based on the information available to claimant at the time he notified Reed that he was quitting, claimant did not show that the gap of time between the end of his job at Reed and when he began working for ASI met the "shortest time deemed reasonable" requirement in the OAR 471-030-0038(5)(a) definition of good cause for leaving work. Accordingly, for that reason as well, claimant did not show that he had good cause for leaving work at Reed.

Because claimant did not show good cause for leaving work with Reed, claimant did not show that he did not have reasonable assurance. Absent a showing that reasonable assurance did not exist, claimant is ineligible to receive benefits for weeks 24-18 through 34-18, which were weeks during Reed's summer recess.

DECISION: Order No. 18-UI-115505 is affirmed.

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

DATE of Service: October 12, 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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