

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0075

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 14, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 154135). Claimant filed a timely request for hearing. On December 18, 2013, ALJ Vincent conducted a hearing, and on January 10, 2014 issued Hearing Decision 14-UI-08272, affirming the Department's decision. On January 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and claimant's written argument. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**, except that we modify finding of fact (6) to state: "The employer chose August 30, 2013 as claimant's departure date. Claimant agreed, and left work on that date."

We also address claimant's argument that the ALJ erred in concluding that claimant's work separation was a discharge, and not a quit. OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

At hearing, claimant testified that the employer did not require him to submit a letter of resignation, and that he could have continued to work for the employer for an indefinite period of time if he had not done so. Transcript at 5-6. As found by the ALJ, claimant agreed to work with the employer on a mutually

agreeable departure date.<sup>1</sup> Exhibit 1 at 12. At hearing, claimant testified that he agreed to the employer's choice of August 30, 2013 as his departure date. Transcript at 25. Because claimant voluntarily submitted his letter of resignation and agreed to leave work August 30, 2013, the work separation is a quit. The fact that claimant would have preferred to have continued working for the employer until it found a replacement, and he found another job, does not change the nature of the work separation to a discharge.<sup>2</sup> We therefore agree with the ALJ's conclusion that claimant quit work.

**DECISION:** Hearing Decision 14-UI-08272 is affirmed.

Susan Rossiter and D. E. Larson;  
Tony Corcoran, not participating.

**DATE of Service:** February 11, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

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<sup>1</sup> Hearing Decision 14-UI-08272 at 2.

<sup>2</sup> *See accord Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999) (claimant quit even though he changed his mind about leaving and the employer refused to allow him to rescind his resignation); *J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (claimant's work separation was a voluntary leaving, where he gave notice of his intent to quit work, but later agreed to his supervisor's suggestion to accelerate the separation date); *Smith v. Employment Division*, 34 Or App 623, 627, 579 P2d 310 (1978) (claimant's work separation was a voluntary leaving, where she gave notice of her intent to quit work, and agreed with her employer on a mutually acceptable separation date).