

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0078

*Modified
Disqualification
Eligible Weeks 28-13 and 29-13*

PROCEDURAL HISTORY: On September 5, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 90435). Decision # 90435 became final on September 25, 2013 without a request for hearing having been filed. On October 1, 2013, claimant filed a request for hearing. On November 1, 2013, 2013, ALJ Kangas issued Hearing Decision 13-UI-03786, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days. On November 15, 2013, the Office of Administrative Hearings (OAH) received claimant's response. On December 16, 2013, ALJ M. Davis conducted a hearing, and on January 7, 2014 issued Hearing Decision 14-UI-07849, allowing claimant's late request for hearing, and concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause. On January 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No party appealed those portions of Hearing Decision 14-UI-07849 allowing claimant's late request for hearing, and concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit. We therefore limit our review to whether claimant had good cause to quit working for the employer.

FINDINGS OF FACT: (1) Linkus Enterprises employed claimant as an installer from January 24 to July 10, 2013.

(2) In June 2013, claimant was on a medical leave of absence pursuant to a workers compensation claim. On July 9, 2013, claimant's supervisor informed him that he was receiving a pay reduction based on his work productivity during the first quarter of 2013. Claimant notified his employer that he was quitting work, effective July 23, 2013. The employer discharged claimant on July 10, 2013.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant failed to establish he had good cause to quit working for the employer.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he 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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

At hearing, claimant asserted he quit work because his supervisor informed him that he was receiving a pay reduction based on his lack of productivity during his June 2013 medical leave pursuant to a worker’s compensation claim, and that he would receive a second pay reduction in the third quarter of 2013. Transcript at 15-16. However, claimant’s supervisor testified that he informed claimant he was receiving a pay reduction based on his productivity during the first quarter of 2013, and denied telling claimant he would receive a pay reduction in the third quarter of 2013. Transcript at 23-24. The evidence on that issue is, at best, equally balanced. Claimant therefore failed to establish by a preponderance of evidence that he had good cause to quit.

Claimant therefore is disqualified from receiving benefits, except that, pursuant to ORS 657.176(8), claimant is eligible for benefits for the weeks from July 7 through 20, 2013 (week 28-13 and 29-13).

DECISION: Hearing Decision 14-UI-07849 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.