

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0157

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 18, 2013, the Oregon Employment Department (the Department) served notice of an amended administrative decision concluding claimant voluntarily left work without good cause (decision #124616). Claimant filed a timely request for hearing. On December 23, 2013, ALJ Holmes-Swanson conducted a hearing, and on January 17, 2014 issued Hearing Decision 14-UI-08687, affirming the Department's decision. On January 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Crossroads Truckstop employed claimant from October 15, 1975 to September 8, 2013 as a general manager. Claimant was also the owner of Crossroads Truckstop during that time.

(2) On September 8, 2013, claimant sold Crossroads Truckstop to a buyer and ceased working for Crossroads Truckstop after the sale. Claimant knew the new owner would not continue claimant's employment after the sale date. Claimant wanted to sell the truckstop because of his age, and made the sale because the new owner had offered to purchase the truckstop.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

Work Separation. 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) (August 3, 2011). Claimant could have continued to work for the truckstop if he had sold it to a buyer that had continuing work available for him. His decision to sell the employer to the new owner that did not offer him continued employment was a voluntary act. Accordingly, we find that the work separation was a quit. *See accord Employment Department v. Hemke*, 155 Or App 303,963 P2d 750 (1998); *Employment Department v. Shurin*, 154 Or App 352, 959 P2d 637 (1998).

Voluntary Leaving. 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.

Claimant sold the employer due to his age and because he had a willing purchaser. Claimant did not show that his age posed a grave situation that left him with no reasonable alternative but to leave work when he did. Rather than leave work, claimant had the reasonable alternative of seeking a buyer who was willing to employ him for some period of time after the sale of the business. Moreover, claimant failed to show that he had no reasonable alternative but to sell the business. Claimant could have chosen to retain ownership of the business and to continue working for it.

Claimant quit work without good cause and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-08687 is affirmed.

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

DATE of Service: February 25, 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.