

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0160

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On October 18, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #143116). Claimant filed a timely request for hearing. On January 6, 2014, ALJ Upite conducted a hearing, and on January 15, 2014 issued Hearing Decision 14-UI-08577, affirming the Department's decision. On January 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kampers West Kampground LLC employed claimant from August 24, 2011 to September 18, 2013 as a campground manager. Claimant's wife also worked as a manager for the employer.

(2) The employer allowed claimant and his wife to live in a house in the campground while employed by the employer.

(3) On September 12, 2013, claimant's wife left the manager's office unstaffed and closed during business hours because she had a medical appointment. When the employer's owner went to the campground on September 14, 2013 to discuss the matter with claimant's wife, claimant's wife told the owner that she and claimant were moving to Prairie City, Oregon.¹

(4) On September 14, 2013, the employer's owner told claimant the employer had work available for him until at least October 1, 2013, possibly longer. Claimant told the owner he had to leave work.

¹ We take official notice of the distance between Warrenton, Oregon and Prairie City is 368.8 miles. Any party that objects to our doing so must submit such objection to this office in writing setting forth the basis of the objection in writing, within ten days of the date on which this decision is mailed. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received, the noticed fact will remain in the record.

(5) On September 15, 2013, claimant gave a prospective manager a tour of the campground. The employer was in the process of interviewing a new manager, but did not hire a new manager before claimant left work.

(6) On September 18, 2013, claimant quit work and moved to Prairie City, Oregon. Claimant's wife did not have employment in Prairie City, Oregon.

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

We first address whether claimant quit work or was discharged. "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (August 3, 2011). 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). 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. OAR 471-030-0038(2)(b).

In Hearing Decision 14-UI-08577, the ALJ noted that claimant's testimony was "illogical and seemed rehearsed, rather than directly responsive to questions," and therefore was not credible.² We have reviewed the record in its entirety, agree with the ALJ's credibility determination, and therefore found in accordance with the employer's evidence on facts in dispute. The employer told claimant he could continue working for the employer until at least October 1, 2013, and possibly longer. When the employer's owner told claimant he could continue working, claimant told her he had to leave and go to Eastern Oregon. Transcript at 22. It is undisputed that claimant and his wife left the campground, and did not return, on September 18, 2013. Because claimant could have continued to work for the employer after September 18, but was not willing to do so, the work separation was a quit.

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 asserted at hearing that he left work because the employer discharged him. To the extent claimant left work because he believed the employer discharged him, he did not show that he had good cause to leave work when he did. Claimant did not establish at hearing that he had a reasonable basis for believing the employer had discharged him. Claimant admitted he knew when he left work that he could have continued to work until October 1, 2013, and the employer testified that it had continuing work for claimant until at least October 1, and possibly longer. Transcript at 6, 22, 25. Claimant asserted that the employer had discharged him because the employer instructed him to show some

² Hearing Decision 14-UI-08577 at 2.

managers the campground on September 15, 2013. Claimant believed the employer had hired new managers to replace him and his wife. Transcript at 5 to 6. The employer was in the process of interviewing a new manager, but did not hire a new manager until after claimant left work. Claimant did not verify with the owner if continuing work was still available for him at the time he left work. Rather than quitting work on September 18, 2013, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would have verified with the employer if continuing work was available rather than assuming the employer had discharged him. Claimant therefore failed to show that he had no reasonable alternative but to leave work when he did.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-08577 is affirmed.

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

DATE of Service: February 26, 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.