

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0214

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 19, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 113300). Claimant filed a timely request for hearing. On December 11, 2013, ALJ Lohr conducted a hearing, and on January 14, 2014 issued Hearing Decision 14-UI-08534, affirming the Department's decision. On February 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lariot Corp. employed claimant from September 5, 2007 to July 3, 2013, last as a dishwasher.

(2) Claimant worked evening shifts for the employer. Claimant last worked on July 3, 2013, and was not scheduled to work again until after July 10, 2013.

(3) On July 10, 2013, claimant arrived at work to pick up her regular paycheck. At that time, claimant notified her manager that she was unable to continue working evening shifts because she was busy "helping or working with" a friend in the evenings." Transcript at 17. The manager told claimant that if she was unable to work evening shifts, she would have to resign." Transcript at 17. Claimant resigned, effective immediately.

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

OAR 471-030-0038(2)(b) states 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 quit. OAR 471-030-0038(2)(a).

In Hearing Decision 14-UI-08534, the ALJ determined that claimant's testimony that her manager terminated her employment without explaining why was less persuasive than the employer's evidence that claimant resigned because she was unwilling to continue working evening shifts.¹ We have reviewed the record in its entirety and agree with the ALJ's determination. The record therefore shows that claimant could have continued to work for the employer if she had been willing to continue working evening shifts. Because claimant could have continued to work for the employer for an additional period of time, the work separation is a quit.

A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). If an individual quits work to accept an offer of other work, good cause exists only if the offer is definite, and the offered work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, is reasonably expected to continue, and pays an amount equal to or in excess of the weekly benefit amount, or greater than the work left. OAR 471-030-0038(5)(a). Otherwise, "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 quit work. OAR 471-030-0038(4). 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 her employer for an additional period of time.

At hearing, claimant denied telling her manager that she was unable to continue working evening shifts because she was busy "helping or working with" a friend in the evenings." Transcript at 20. Claimant therefore failed to present evidence showing that she quit work with good cause under OAR 471-030-0038(5)(a) or OAR 471-030-0038(4). Absent such evidence, we conclude that claimant quit work without good cause, and that she is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-08534 is affirmed.

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

DATE of Service: March 6, 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.

¹ Hearing Decision 14-UI-08534 at 2.