

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0266

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 18, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151442). Claimant filed a timely request for hearing. On January 28, 2014, ALJ Micheletti conducted a hearing, and on February 4, 2014 issued Hearing Decision 14-UI-09761, affirming the Department's decision. On February 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) England Logistics employed claimant as a salesperson from May 13, 2013 through October 16, 2013.

(2) On October 4, 2013, the employer placed claimant on a Performance Improvement Plan (PIP) because she failed to produce a sales rate that satisfied the employer's expectations. The employer initiated the PIP for the following week ending October 14, 2013.

(3) Claimant failed to meet the sales goals delineated in the PIP. On October 16, 2013, claimant did not arrive at work at the regular starting time of 8:00 a.m. At 8:05 a.m. her supervisor texted claimant regarding her attendance that day. Claimant texted in response that she could not meet her sales goals and would drop her key with the employer.

(4) On October 16, 2013, the employer had not decided whether to terminate claimant's employment. The employer had continuing work available for claimant and would have allowed claimant several more weeks to ramp up her sales statistics.

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

The first issue to determine is the nature of the 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). 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).

During the hearing, claimant initially argued that the employer discharged her for not meeting her sales goals. The employer asserted claimant resigned through a text message sent on October 16, 2013, indicating she could not meet her sales goals and she intended to turn in her key to the employer. On October 16, the employer had continuing work available and was willing to allow claimant to work additional weeks to improve her sales statistics. Based on the employer's willingness to continue claimant's employment, we conclude that the claimant quit her job.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

To the extent that claimant quit because she believed the employer would discharge her, she failed to show good cause. To establish good cause, a claimant who quit work to avoid a possible discharge must show that her discharge was reasonably certain and likely imminent.<sup>1</sup> Claimant believed the employer was going to discharge her because it placed her on a PIP to improve her sales statistics. However, the

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<sup>1</sup> See *Mark A. Sorensen* (Employment Appeals Board, 12-AB-2907, November 28, 2012)(claimant had good cause to quit work to avoid inevitable discharge, not for misconduct); *Susan L. West* (Employment Appeals Board, 12-AB-2961, November 16, 2012) (claimant had good cause to quit work to avoid being imminent or inevitable discharge that was not for misconduct); *David J. Schalock* (Employment Appeals Board, 12-AB-2919, November 15, 2012) (remand to determine whether claimant's potential discharge was for misconduct, and whether he had good cause to quit to avoid being discharged, not for misconduct, when his immediate work separation was assured and the only thing left was to negotiate how the separation would be characterized by the employer to prospective employers); *Debra Legato* (Employment Appeals Board, 12-AB-2824, November 6, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, and losing her pharmacy technician certification); *Thomas R. Bailey* (Employment Appeals Board, 12-AB-1609, June 27, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, when his discharge was assured and he had reason to believe it would look better on his employment record if he quit instead); *Donna Zelinski* (Employment Appeals Board, 12-AB-0436, March 16, 2012)(claimant had good cause to quit to avoid being discharged, not for misconduct, and receive a severance package); *Timothy E. Case* (Employment Appeals Board, 11-AB-3571, February 3, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, and receive a monetary settlement); *compare Melody G. Zehner* (Employment Appeals Board, 12-AB-2831, November 16, 2012) (claimant did not have good cause to quit work when her discharge was not assured and did not specify particular concerns about the stigma of a discharge on her future employability); *Sharon N. Martin* (Employment Appeals Board, 12-AB-2916, November 19, 2012)(claimant did not have good cause to quit work to avoid a performance improvement plan she thought would result in her discharge, but discharge was not inevitable); *Dora Sue S. Redford* (Employment Appeals Board, 12-AB-2914, November 19, 2012) (claimant did not have good cause to quit work to avoid a performance improvement plan she thought would result in her discharge, but discharge was not inevitable).

employer's supervisor gave no indication that the employer was going to discharge her if she did not resign. The supervisor testified he was willing to continue claimant's employment while working on her improvement plan. Claimant therefore failed to show that her discharge was reasonably certain and likely imminent. In addition, claimant had a reasonable alternative to quitting her job: she could have continued to work on her sales goals in an attempt to fulfill the terms of her PIP. In conclusion, claimant failed to demonstrate that she had good cause to voluntarily leave work and is, therefore, disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-09761 is affirmed.

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

**DATE of Service:** March 18, 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.