

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0292

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 19, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #122453). Claimant filed a timely request for hearing. On January 23, 2014, ALJ C. Smith conducted a hearing, and on February 10, 2014 issued Hearing Decision 14-UI-10051, affirming the Department's decision. On February 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Valligent employed claimant from July 15, 2013 to September 9, 2013 to review residential property appraisals.

(2) Claimant worked in Oregon. The employer required claimant to work Monday through Friday, from 8:00 a.m. to 5:00 p.m. The employer paid claimant \$30 per completed appraisal review, and \$5 to redo an appraisal review. It did not pay a minimum base hourly wage.

(3) Claimant performed her work by computer. Because of problems with the computer programs the employer required claimant to use to complete appraisal reviews, claimant was unable to complete sufficient appraisal reviews to earn a minimum of \$8.95 per hour for every hour she worked. Claimant experienced multiple delays while trying to save her work using the software, and portions of the reviews would disappear when she sent them through the internet. She also often had to redo portions of the reviews because the employer changed the requirements for completing the reviews.

(4) Claimant complained about the software and compensation problems to the chief appraiser, and to the vendor relations coordinator. She also requested software assistance through the employer's technology department. Although the employer made some improvements to the software, and claimant found ways to work around some of the computer issues, claimant was still unable to complete sufficient reviews to earn minimum wage for all the hours she worked.

(5) Some days the employer had no appraisals for claimant to review. Despite having no appraisals for claimant to review, the employer required her to report to work and remain at her computer workstation from 8:00 a.m. to 5:00 p.m. Claimant had no earnings for the hours she worked on those days.

(6) On September 9, 2013, claimant notified the employer she was quitting work due to inadequate earnings.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude claimant voluntarily left work with good cause.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that her situation was of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit work because she did not earn sufficient wages. The record shows that the employer repeatedly failed to pay claimant at least the Oregon minimum hourly wage rate of \$8.95 for all the hours she worked. *See* ORS 653.025; OAR 839-020-0010. The ALJ reasoned that claimant did not meet her burden to establish good cause for leaving work because the computer software problems, and the resulting compensation issues, were ongoing throughout her employment, and there was no final incident that caused claimant to quit her job.<sup>1</sup> We disagree. Although there was no “final incident,” claimant met her burden to show that the employer’s repeated failure to pay her the Oregon minimum wage was a situation of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Due to the employer’s inefficient computer software, and the lack of appraisals for claimant to review, claimant was unable to complete sufficient appraisal reviews to earn a minimum of \$8.95 for all the hours she worked. The employer did not address the computer issues despite claimant’s multiple complaints about the computer and compensation issues. Oregon wage laws required the employer to pay claimant a minimum hourly wage of \$8.95 per hour. ORS 653.025. Because the employer’s practice of paying per appraisal review did not equal minimum wage for the time it took claimant to complete those appraisal reviews, the employer had to make up the difference so the claimant received at least minimum wage for the time she worked. The employer did not do so. No reasonable and prudent person would continue to work for an employer that repeatedly failed to pay that person minimum wage. Claimant therefore quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-10051 is set aside, as outlined above.

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<sup>1</sup> Hearing Decision 14-UI-10051 at 3.

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

**DATE of Service: March 13, 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.