

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0307**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On November 12, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #111447). Claimant filed a timely request for hearing. On January 24, 2014, ALJ Holmes-Swanson conducted a hearing, and on February 3, 2014 issued Hearing Decision 14-UI-09677, affirming the Department's decision. On February 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Palm Motel/Inventure, Inc. employed claimant from June 15, 2012 to June 18, 2012 as a housekeeping consultant.

(2) Claimant earned \$9.50 per hour as a housekeeping consultant. She worked 17.75 hours from June 15 to June 18, 2012. Claimant's duties were to observe the employer's housekeepers and to recommend strategies to the employer for improving the performance of the housekeeping staff. Based on claimant's recommendations, the employer demoted its head housekeeper.

(3) The employer was pleased with claimant's work and offered the head housekeeping position to claimant. The head housekeeping position was a part time position.

(4) Claimant did not accept the head housekeeping position because she did not speak sufficient Spanish to communicate with some of the other staff, she did not have a vehicle to travel between the employer's

hotels in Ashland, and because she was dissatisfied with the pay. The employer did not require the head housekeeper to speak Spanish, or to use a personal vehicle to travel between its hotels.

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

The nature of the work separation is at issue in this case. 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

Claimant contended that the work ended due to a mutual decision between claimant and the employer. Transcript at 7 to 8. However, it is undisputed that the employer offered claimant ongoing work after her work as a housekeeping consultant ended. “Work” is not defined in terms of a particular position or set of duties with the employer; it is defined as the relationship between the parties. The relationship between the parties did not end when the housekeeping consultant position ended. Claimant could have continued to work for an indefinite period of time as head housekeeper. Claimant chose not to accept the reassignment to head housekeeper because she did not speak Spanish or have a vehicle she could use during work. Additionally, she was dissatisfied with her potential earnings as head housekeeper. Because continuing work was available to claimant after June 18, 2013, and claimant chose not to work, claimant voluntarily left work under OAR 471-030-0038(2).

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. If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

To the extent claimant quit work because she was dissatisfied with the number of hours or pay for the head housekeeping position, claimant failed to show she had good cause to quit. The record does not show the new housekeeping position was a reduction in hours or pay from claimant’s original position as a housekeeping consultant. However, assuming *arguendo*, that the housekeeping position was a reduction in hours or pay, we analyze claimant’s decision to quit under OAR 471-030-0038(4)<sup>1</sup> and OAR 471-030-0038(5)(e). The record does not show that working part time substantially interfered with claimant’s return to full time work, or that claimant’s cost of working exceeded the pay she

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<sup>1</sup> OAR 471-030-0038(5)(d) does not apply where, as here, an employee’s earnings are reduced as a result of transfer, demotion or reassignment.

received. Because claimant had worked part time while working as a housekeeping consultant, and absent evidence of a change in claimant's costs to work, we presume the costs did not exceed the pay received. Claimant failed to show that no reasonable and prudent person would have continued to work for her employer for an additional period.

To the extent claimant quit work because she did not speak Spanish or have a vehicle to use during work, claimant did not show she had good cause to quit. Although claimant may have preferred to speak Spanish or have a personal vehicle to use at work, the employer did not require either. The employer was satisfied with claimant's work performance, and had continuing work available for her as a head housekeeper. Claimant's situation was not of such gravity that she could not have continued to work for an additional period of time. Rather than quitting work, claimant had the reasonable alternative of continuing to work as head housekeeper without speaking Spanish, and without having a personal vehicle to use at work. Claimant did not show she had no reasonable alternative but to quit work.

Claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-10004 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.