

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0378

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #123743). Claimant filed a timely request for hearing. On February 13, 2014, ALJ Lohr conducted a hearing, and on March 7, 2014 issued Hearing Decision 14-UI-11865, affirming the Department's decision. On March 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. We considered claimant's argument and the entire hearing record before making our decision.

**FINDINGS OF FACT:** (1) Verizon Wireless employed claimant from November 6, 2006 to November 16, 2013. Claimant worked as a retail sales representative at the time his employment ended.

(2) Claimant's district manager encouraged claimant to exaggerate the benefits of the employer's products, and to provide selective information about the products to increase sales. Claimant did not approve of these sales tactics and refused to give misleading information to customers. Claimant's direct supervisor did not require him to use the sales tactics.

(3) Claimant told his district manager and his direct supervisor he would not mislead customers. The employer gave claimant one verbal warning because he exhibited a bad attitude regarding the managers' sales techniques. The employer never told claimant it might discharge him.

(4) In 2012, the employer moved claimant from a work site in Keiser, Oregon, to a work site in Albany, Oregon, a longer commute from claimant's home. Claimant was also dissatisfied with the pay rate he received when the employer moved him to Albany.

(5) Claimant met or exceeded his sales goals.

(6) On November 16, 2013, claimant voluntarily left work because was dissatisfied with his job.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

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 left work because he disagreed with the district manager’s recommended sales practice of providing incomplete or exaggerated information to customers to sell its products. Despite refusing to follow the district manager’s sales instructions, claimant was able to meet or exceed his sales goals. Nor does the record show the employer planned to discharge claimant for refusing to follow its sales practices, or that the sales practices violated the law. Claimant did not show by a preponderance of the evidence that he had to use misleading sales practices to reach his sales goals or to continue working for the employer. Claimant thus failed to show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would no reasonable alternative but to have left work.

Claimant was also dissatisfied with his job because the employer moved him to a position further from his home with a lower hourly rate. To the extent claimant quit work because the change in his job assignment would result in a reduction in pay, claimant did not show he had good cause for leaving work when he did. Although a reduction in pay may constitute good cause to leave work under certain circumstances, a pay reduction resulting from a “transfer, demotion or reassignment” does not. OAR 471-030-0038(5)(d)(A). Because the reduction in claimant’s pay resulted from his demotion or reassignment to a different position, the lesser pay for that position did not constitute good cause for claimant to quit work under OAR 471-030-0038(5)(d)(A). Claimant also failed to show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work because of the reduced rate of pay and the increased cost of his commute. OAR 471-030-0038(4). The record does not show that the cost of continuing to work for the employer would have exceeded his income from work, or that he was unable to complete the commute due to inadequate transportation or other reasons. Although claimant suggested that the employer moved claimant to a less desirable position because claimant was unwilling to use the employer’s sales strategies, the record does not show the changes were due to claimant’s refusal to follow all the employer’s sales practices. To the extent claimant left work because the employer transferred claimant to a different position with a different work location and lower pay rate, claimant did not show he had good cause to leave work.

In sum, claimant left work without good cause, and is disqualified from receiving unemployment insurance benefits because of that work separation.

**DECISION:** Hearing Decision 14-UI-11865 is affirmed.

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

**DATE of Service:** March 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.