

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0431

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #10333). Claimant filed a timely request for hearing. On February 24, 2014, ALJ Hatfield conducted a hearing, and on February 26, 2014 issued Hearing Decision 14-UI-11207, affirming the Department's decision. On March 15, 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Conkraft Construction Inc. employed claimant from November 15, 2013 to December 17, 2013 as an office assistant and property supervisor.

(2) Claimant was responsible for managing the employer's rental homes and a mobile home park. On approximately December 10, 2013, claimant told the owner and her supervisor that she was concerned some of the employer's property management practices were illegal. She was concerned that the employer accepted cash to supplement rental voucher payments, failed to send a written accounting when retaining tenants' security deposits, conducted credit and background checks without the applicants' signatures, and failed to notify applicants when the employer denied their applications due to poor credit.

(3) On December 17, 2013, the owner met with claimant and claimant's supervisor. They discussed claimant's concerns about the employer's practices. Claimant's supervisor was assigned the task of researching the legal issues claimant addressed.

(5) On December 17, 2013, claimant resigned because she did not want to continue engage in practices she thought were illegal.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude claimant voluntarily left work without 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) (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.

Claimant asserted she quit work because the employer asked her to engage in illegal practices. Transcript at 5. However, claimant did not establish by a preponderance of the evidence that the practices were illegal. To the extent claimant believed the practices were illegal, claimant failed to show the employer would have required claimant to engage in the practices she opposed after the December 17, 2013 meeting. The parties provided conflicting testimony regarding this issue. The employer testified that it addressed claimant’s complaints by having the December 17 meeting, taking the duties claimant opposed away from her, and directing claimant’s supervisor to research the legal issues and meet with the employer’s attorney to determine the legality of the practices. Transcript at 16. Claimant testified that the employer did not take the job duties she opposed away from her. Transcript at 26. The evidence about whether claimant would have to engage in the practices she opposed was equally balanced between the parties. Thus, claimant failed to show by a preponderance of the evidence that the employer required claimant to perform practices she believed violated the law. Rather than leaving work on December 17, claimant had the reasonable alternative of continuing to work while the employer evaluated its practices. The record does not show this would have been futile given that the employer investigated claimant’s complaint.

In sum, claimant failed to show she left work for a reason of such gravity that she had no reasonable alternative but to quit. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-11207 is affirmed.

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

DATE of Service: April 15, 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.