

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0484**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 26, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #75952). Claimant filed a timely request for hearing. On March 4, 2014, ALJ Messecar conducted a hearing, and on March 12, 2014 issued Hearing Decision 14-UI-12158, affirming the Department's decision. On March 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant asserted in his written argument that the ALJ erred by not applying ORS 657.176(5) to this work separation. ORS 657.176(5) applies where there is a collective bargaining agreement in effect. A collective bargaining agreement is an agreement between an employer and a labor union. The record does not show that claimant was a union member or that there was a collective bargaining agreement in effect in this employment relationship. Thus, ORS 657.176(5) does not apply to this work separation.

Claimant also asserted that the ALJ erred by excluding testimony from claimant's witness. The ALJ did not take testimony from claimant's witness because the testimony would have been unduly repetitive of claimant's testimony. Therefore, the ALJ properly excluded the testimony from evidence. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Webfoot Services Incorporated employed claimant from May 20, 2012 to November 22, 2013 as a transmission rebuilder.

(2) Claimant worked five days per week, and earned \$20 per hour. On May 21, 2013, claimant became eligible for paid holidays, and 40 hours of paid vacation per year.

(3) In August 2013, the employer reduced claimant's paid holiday benefit from eight hours of pay per holiday to six hours of pay per holiday. The employer also reduced claimant's paid vacation from 40 hours per year to 22 hours per year.

(4) Claimant's monthly costs of working for the employer during September, October and November 2013 were \$150 for gasoline, \$100 for vehicle maintenance, and \$100 for specialized tools.

(5) Claimant's workload varied from ten to forty hours per week. Prior to November 2013, claimant worked more than fifteen hours per week. During November 1 to November 21, 2013, claimant worked approximately 15 hours per week. His gross monthly income at that time was \$1,300.

(6) Claimant's monthly combined household and work-related expenses totaled \$1,320.

(7) On November 22, 2013, claimant left work because the employer reduced his holiday and vacation benefit pay and reduced his hours, causing claimant's monthly living expenses to exceed his net earnings.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that 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). If an individual quit work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. OAR 471-030-0038(5)(d). An employer does not reduce the rate of pay by loss or reduction of fringe benefits. OAR 471-030-0038(5)(d)(C). 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 the return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). Otherwise, "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, had no reasonable alternative but to leave work. The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010).

To the extent claimant quit work because the employer reduced his holiday and vacation pay, claimant did not have good cause to leave work under OAR 471-030-0038(5)(d)(C), under which a reduction in fringe benefits is not considered a reduction in the rate of pay. The employer did not reduce claimant's regular hourly rate of pay, which was \$20 throughout his employment.

Claimant quit work due, in part, to a reduction in hours. However, claimant did not assert or show that continuing to work for the employer substantially interfered with his return to full time work. Nor did he show that the cost of working for the employer exceeded the remuneration he received. Claimant's monthly costs of working for the employer were \$350, which did not exceed his gross monthly income of \$1,300 at the time he quit. Thus, to the extent claimant quit work due to a reduction in hours, he quit work without good cause.

Claimant also quit because his earnings were insufficient to pay all his monthly living and work-related expenses. However, claimant did not show that he improved his financial situation by quitting his job and losing his income, or that he could not afford to travel to work. Absent such showing, we cannot find that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for the employer.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from the receipt of unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-12158 is affirmed.

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

**DATE of Service:** April 16, 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.