

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0494

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On February 13, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83806). Claimant filed a timely request for hearing. On March 20, 2014, ALJ Lohr conducted a hearing at which the employer did not appear, and on March 21, 2014 issued Hearing Decision 14-UI-0494, affirming the Department's decision. On March 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Feynman Group, Inc. employed claimant in various positions from December 13, 2010 until December 13, 2013. Claimant was initially employed as a receptionist and her last position was as a business manager with a variety of administrative duties.

(2) Sometime in approximately November 2013, claimant's boss told claimant that her position with the employer was going to be "dissolved." Audio at ~7:35, ~8:29, ~11:10, ~14:58. Claimant's boss did not tell her, and claimant did not inquire about, the reasons for the elimination of her position, when it would occur or whether she could continue working for the employer in a different capacity. When claimant heard that her position was going to be eliminated in the future, claimant "just felt like I should leave." Audio at ~11:21. During the conversation with her boss, claimant and the boss agreed that claimant would leave work on December 13, 2013, which was the date she had previously planned to start a vacation.

(3) On December 13, 2013, claimant left work for her vacation and did not thereafter return to work. Claimant voluntarily left work on December 13, 2013.

(4) During her employment, claimant's boss never notified claimant that her work performance was deficient.

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

At hearing, claimant's testimony was faltering and not especially forthcoming. Claimant's testimony about her work separation repeated over and over that her boss told her that her position was being "dissolved," but offered little additional information about the separation. Audio at ~7:35, ~8:29, ~11:10, ~14:58. However, because the employer did not appear at the hearing to present evidence, we are left with only claimant's testimony to resolve this matter, however incomplete that testimony may appear.

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b). When a claimant and an employer have agreed to a mutually acceptable date on which the employment will terminate, the work separation is treated as a voluntary leaving and not as a discharge. *See Employment Department v. Shurin*, 154 Or App 352, 356, 959 P2d 637 (1998). Although claimant evaded the ALJ's questions about whether she quit or was discharged, she did ultimately testify that she and her boss "agreed on" a leaving date of December 13, 2013. Audio at ~7:38, ~7:50, ~11:44, ~15:07. There was no indication in claimant's testimony that claimant's boss imposed the date of the work separation or that he ever told claimant that she needed to stop working by any particular date. Applying the principles in *Shurin*, claimant's work separation was a voluntary leaving on December 13, 2013.

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 P3d 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.

Although claimant contended that she thought she should quit work after her boss told her that her position was going to be "dissolved," claimant also testified that her boss did not give her any date by which her position would be eliminated. Audio at ~11:44. Claimant was uncertain at hearing whether, by his statement, her boss intended to have her leave employment or whether he was willing to allow her to continue working for the employer in another capacity. Audio at ~8:36. The details supporting claimant's conclusion that she reasonably needed to leave work on December 13, 2013 are not clear in the record. After being told that her job position was being "dissolved" at some unspecified future time, a reasonable and prudent employee who had never received any notices that her work performance was deficient, exercising ordinary common sense, would not have concluded that she needed to leave work until confirming with her boss that his statement meant she was being laid off and that no other positions were available to her. Because claimant did not make this inquiry before she decided to leave work, claimant did not show good cause for leaving work when she did.

Claimant did not meet her burden to establish good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-13174 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.