

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0524

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On February 13, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 85028). Claimant filed a timely request for hearing. On March 18, 2014, ALJ Clink conducted a hearing, and on March 21, 2014 issued Hearing Decision 14-UI-13114, affirming the Department's decision. On April 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) John Skinner Management Co. Inc. last employed claimant as a used automobile salesperson from May 21 to June 22, 2013.

(2) The employer had laid claimant off for lack of work in December 2012. Claimant returned to work for the employer on May 21, 2012 based on a manager's assurance that the employer was increasing its inventory and advertising.

(3) Claimant worked for the employer from approximately 9:00 a.m. to 5:00 p.m. on weekdays. The employer paid claimant a commission on each vehicle he sold, or Oregon minimum wage, whichever was greater. The employer did not increase its inventory or advertising. From May 21 through June 22, 2013, claimant earned \$1,758 working for the employer, which was a little more than Oregon minimum wage.

(4) In mid-June 2013, claimant complained to the manger on duty about the employer's failure to increase its inventory or advertising. The manager told claimant that the employer was not going to increase its inventory or advertising. The manager told claimant that he planned on quitting work, and that he would have the employer's owner or another manager telephone claimant.

(5) Claimant did not receive a call from the owner or a manager. Claimant did not contact the employer or return to work. As of June 22, 2013, claimant was unwilling to continue working for the employer

because the employer did not increase its inventory, and claimant was earning little more than Oregon minimum wage. The employer had continuing work available for claimant.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) provides that 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. 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). 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.

In the present case, it is undisputed claimant was unwilling to continue working for the employer after June 22, 2013, and that the employer had continuing work available for claimant. Because claimant could have continued working for the employer for an additional period of time, the work separation is a quit. Claimant quit work because the employer did not increase its inventory or advertising as a manager assured claimant it would, and claimant was earning little more than minimum wage. However, the employer was under no obligation to increase its inventory or advertising. Claimant did not assert that the cost of working for the employer exceeded the remuneration he received. Although claimant asserted that working for the employer full time interfered with his ability to search for better paying work, employees often search for work while working full time, and claimant failed to show that he was unable to do the same.

Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time. We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-13114 is affirmed.

DATE of Service: April 29, 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.