

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0561**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #163315). Claimant filed a timely request for hearing. On March 3, 2014, ALJ Monroe conducted a hearing, and on March 17, 2014 issued Hearing Decision 14-UI-12614, affirming the Department's decision. On April 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written 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) Kendall Dealership Holdings, LLC employed claimant from November 26, 2012 to December 5, 2013.

(2) From 2004 until October 2007, claimant worked as a car salesperson for the employer. Claimant quit the car sales position in 2007 because he was unable to earn sufficient income to pay his living expenses. He accrued debt, and experienced marital problems due to the stress from his level of income at that time.

(3) Claimant began working for the employer again on November 26, 2013 as a finance manager. Claimant earned approximately \$6,687 per month as a finance manager.

(4) On December 2, 2013, the employer removed claimant from his position as a finance manager, and told him he could continue working for the employer as a car salesperson at the same location. The car sales position paid on a commission basis of \$200 per car sale, with a guaranteed minimum wage (\$1551 per month). A car salesperson could earn as much as a finance manager.

(5) Claimant did not work on December 3 and 4, 2013, his normal days off. On December 5, 2013, claimant quit work to seek work that would pay a higher wage than the car salesperson job.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude claimant voluntarily left work without good cause.

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

Claimant argued at hearing that he did not quit, but was discharged because the employer removed him from a finance manager position and offered him work he alleged was unsuitable due to the lower wages. Transcript at 5, 25. However, the determinative factor in deciding the nature of the work separation is whether the employer had continuing “work” available for claimant when the employment ended. “Work” is the “continuing relationship between and employer and an employee,” and is not defined in terms of a particular position or whether the work was suitable for the employee. OAR 471-030-0038(1)(a). It is undisputed that claimant could have continued to work for the employer for an additional period of time as a car salesperson. The work separation was, therefore, a quit.

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 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 his employer for an additional period of time. OAR 471-030-0038(5)(b)(A) provides that when a person leaves suitable work to seek other work, the person has quit without good cause.

Claimant argued at hearing that the car salesperson position was unsuitable because he believed he would earn much lower wages than he had as a finance manager. Transcript at 23-25. In determining whether any work is suitable for an individual, the Department shall consider, in relevant part, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, the experience and prior earnings of the individual, and the distance of the available work from the individual’s residence. ORS 657.190. Claimant did not assert that the car sales position posed any risk to his health, safety or morals, or that it was unreasonably far from his residence. Claimant had prior experience as a car salesperson for the employer. The pertinent question is whether claimant’s prior earnings made work as a car salesperson unsuitable for claimant.

The employer’s human resources associate testified at hearing that the income for a car salesperson varied, but that it was possible for a car salesperson to earn the same income as a finance manager. Transcript at 16. Claimant testified that he sold ten cars per month when he worked as a car salesperson in 2007, which would result in earnings of \$2,000 per month under the employer’s pay structure at the time he quit. Transcript at 22. Claimant’s evidence regarding his potential income was speculative,

based on his sales performance seven years earlier. Transcript at 21. Claimant assumed he would sell the same number of cars he sold in 2007. However, because claimant would have worked on a commission basis, he could have earned the same or more than he did as a finance manager. Thus, claimant did not show that it was more likely than not that his earnings would be so low as to render the salesperson work unsuitable. Thus, considering all the factors to determine whether the car salesperson position was suitable work, we conclude that claimant quit suitable work to seek other work. Accordingly, under OAR 4710-030-0038(5)(b)(A), he quit work without good cause.

We conclude that claimant did not have good cause to voluntarily leave work. Claimant does not qualify to receive unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-12614 is affirmed.

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

**DATE of Service:** April 30, 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.