

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0591

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 95911). Claimant filed a timely request for hearing. On February 28, 2014, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 20, 2014. On March 20, 2014, ALJ Hoyer conducted a hearing, and on March 27, 2014 issued Hearing Decision 14-UI-13576, affirming the Department's decision. On April 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments. Claimant's argument included a request for EAB to consider an audio recording of conversations between claimant, the employer's owner and its accountant. In Hearing Decision 14-UI-13576, however, the ALJ excluded the audio recording because claimant failed to comply with the requirement set forth in OAR 471-040-0023(4), and stated in the February 28, 2014 notice of hearing, that parties provide copies of proposed exhibits to the other parties prior to the date of the scheduled hearing. The ALJ did not err in excluding the audio recording, and claimant's request for EAB to consider the audio recording is denied.

FINDINGS OF FACT: (1) Aqua Plus Custom Pools Inc. employed claimant from February 5, 2007 to December 18, 2013, last as a foreman.

(2) As a foreman, claimant was allowed to commute to and from work in a company vehicle, and have a company cell phone and credit card. Claimant was allowed to use the company credit card to purchase fuel for his company vehicle, and two meals per month for a maximum of \$50 per meal.

(3) On December 18, 2013, the employer's owner notified claimant he that he was being demoted from foreman to laborer. The owner told claimant that his rate of pay would remain the same, but that he would have to commute to and from work in his personal vehicle without reimbursement for fuel or mileage. The owner also told claimant that he would have to return the company cell phone and credit card. Claimant quit work due to the demotion.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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). OAR 471-030-0038(5)(d) (August 3, 2011) provides that if an individual leaves 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 Department's determination of the median rate of pay for similar work in the individual's normal labor market area. However, OAR 471-030-0038(5)(d) applies only when the employer reduces the rate of pay for the position the individual holds, and not when an employee's earnings are reduced as a result of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). Nor does an employer reduce the rate of pay by loss or reduction of fringe benefits. OAR 471-030-0038(5)(d)(C).

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, 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 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, OAR 471-030-0038(5)(d) does not apply to claimant's work separation because he quit work due to a loss or reduction of fringe benefits as a result of a demotion from foreman to laborer, and not a reduction in his rate of pay for the foreman position. Claimant's rate of pay remained the same, and claimant did not assert or argue that the cost of working for the employer without the use of a company vehicle, cell phone and credit card exceeded the remuneration he received. Although claimant disagreed with the demotion, he did not assert or show that it was unlawful, that he lacked a personal vehicle for commuting to and from work, or a personal cell phone for communicating with the employer. 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-13576 is affirmed.

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

DATE of Service: May 6, 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.