

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0600**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #104708). Claimant filed a timely request for hearing. On March 20, 2014, ALJ Seideman conducted a hearing, and on April 2, 2014 issued Hearing Decision 14-UI-14054, affirming the Department's decision. On April 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Hearing Decision 14-UI-14054 refers to Exhibits 1, 2 and 3, which the ALJ did not mark, but did identify and admit into evidence without objection at hearing. Audio Record ~ 1:42 to 3:06. Accordingly, the letter of resignation, two-page job title, and goal percentage summary were marked as EAB Exhibits 1, 2 and 3, respectively. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090. Unless such objection is received and sustained, the information will remain in the record as EAB Exhibit 1, 2 and 3.

**FINDINGS OF FACT:** (1) Swift Management, Inc. employed claimant from June 15, 2012 to December 27, 2013 as a classified sales advisor.

(2) At hire, claimant earned an hourly wage of \$9 per hour, plus bonuses. On August 1, 2013, the employer changed the bonus pay plan to remove the bonus previously paid for selling advertising upgrades ("up-selling"), and to require sales advisors to meet 80 percent of their monthly goal before qualifying for the sales revenue bonus. Claimant met 80 percent of her sales goal for the months of September, October and November 2013, so received revenue bonuses during those months. Without the up-selling bonus, claimant earned approximately \$350 less per month after August 1, 2013.

(3) Claimant's job duties at hire included completing sales calls with existing customers and incoming calls from new customers calling the employer. On December 1, 2013, the employer added a new job responsibility, requiring claimant to spend two hours per day, two days per week, making "cold calls" to prospective business customers. Claimant was dissatisfied with the new job duty.

(4) On December 10, 2013, claimant gave the employer notice she would quit on December 27, 2013. Claimant resigned on December 27, 2013 because she was dissatisfied that the employer reduced her income by changing the bonus pay plan, and gave her a new job duty requiring her to make “cold calls.”

**CONCLUSIONS AND REASON:** 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 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) (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 her employer for an additional period of time. 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 median rate of pay for similar work in the individual's normal labor market area, as determined by the Department. 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).

Claimant quit work, in part, because the new bonus pay plan reduced her income by approximately \$350 per month. Under OAR 471-030-0038(5)(d), an individual may show good cause to leave work due to a reduction in pay under certain circumstances, but that provision does not apply where the reduction in pay occurs “[from a] loss or reduction of fringe benefits.” OAR 471-030-0038(5)(d)(C). The loss of the up-selling bonus was a loss of a fringe benefit. Thus, claimant did not show good cause to leave work because of a decrease in her rate of pay under OAR 471-030-0038(5)(d)(C).

Claimant also failed to show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work under the new bonus pay plan. Although claimant understandably disliked losing the bonus for up-selling advertisements, and having to meet a minimum sales goal to receive the sales revenue bonus, claimant was still guaranteed to earn \$9 per hour, and repeatedly qualified for the monthly sales revenue bonus. Claimant did not assert or show that the cost of continuing to work for the employer exceeded the remuneration she received. Absent such a showing, claimant failed to establish that no reasonable and prudent person would have continued to work under the new bonus pay plan.

Claimant also quit work, in part, because she did not want to perform “cold calls” to increase sales revenue. Claimant testified that she felt “uncomfortable” making cold calls to prospective customers, and that the new responsibility caused her stress. Audio Record ~ 5:58 to 6:46. Employers may change an employee’s duties and reasonably expect the employee to perform the new duties, provided the work remains suitable for the employee. ORS 657.190 provides, in relevant part, that in determining whether any work is suitable for an individual, the Department shall consider 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.

Claimant did not assert that the cold calling duty posed any risk to her health, safety or morals, or that her job was unreasonably far from her residence. Claimant felt stress from completing cold calls, but did not show the resulting stress posed any risk to her health. Claimant was paid the same hourly rate for completing cold calls as she did sales calls with existing customers and incoming calls from new customers calling the employer. The pertinent question is whether claimant's prior training and experience rendered the new job duty unsuitable for claimant. Claimant worked in a sales position, engaging in telephone calls with customers to sell advertisements. It was not unreasonable for the employer to require a sales advisor to call prospective customers to increase sales revenue, rather than only taking inbound calls. Although claimant disliked the new job duty, claimant did not allege or show that it was unsuitable for her. *See* ORS 657.190. Claimant therefore failed to establish that no reasonable and prudent person in her situation would have continued to work for her employer for an additional period of time. Accordingly, claimant did not have good cause to quit work because of the new job duty.

Claimant voluntarily quit work without good cause, and is therefore disqualified from receiving unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-14054 is affirmed.

Susan Rossiter and Tony Corcoran;  
D. E. Larson and J.S. Cromwell, *pro tempore*, not participating.

**DATE of Service:** May 14, 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.