

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0625**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision #135018). The employer filed a timely request for hearing. On April 9, 2014, ALJ Sime conducted a hearing, and on April 10, 2014 issued Hearing Decision 14-UI-14852, concluding claimant voluntarily quit work without good cause. On April 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her 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) Blackhawk Restaurant Group LLC employed claimant from November 18, 2013 to December 11, 2013 as a field development manager in Chicago, Illinois.

(2) The employer's director of operations had worked with claimant as a business partner for ten years before claimant began working for the employer. Based on her working relationship and claimant's experience with a food management company using a similar model to the employer's model, the director was satisfied that claimant had the skills and experience necessary to perform the field development manager duties.

(3) From September 29 to October 3, 2013, the employer paid for claimant to travel from her home in Oregon to Chicago to visit the area and the employer to decide if she wanted to accept the field development manager position with the employer in Chicago.

(4) Claimant accepted the position, and moved to Chicago on November 17, 2013. The employer provided claimant free housing living with the director of operations, moving expenses, and a vehicle to use.

(5) The employer was satisfied with claimant's work performance until, on December 10, 2013, the director of operations told claimant, in front of a vendor, that she was embarrassed by the appearance of the new employees claimant had hired, and that the employer expected claimant to train new employees about the employer's dress code.

(6) On December 10, 2013, claimant returned to the home where she lived with the employer's director of operations. Early the following morning, before leaving home, claimant told the director of operations that she would work until December 14, 2013, and would then return to Oregon because "I can't do this job." Audio Record ~ 10:18 to 10:31. The director of operations asked claimant if she had made her final decision, and claimant replied that she had. The director of operations told claimant that if was ending claimant's employment that day. Claimant packed her belongings, left the director of operation's house, and returned to Oregon.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause.

The first issue in this case is whether claimant quit work or was discharged. 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).

The employer's director of operations testified that claimant stated her last day of work for the employer would be December 14, 2013. Audio Record ~ 10:18 to 10:31. Claimant asserted she did not quit, but, rather, that the director of operations discharged her on December 11, 2013 because claimant attempted to discuss her December 10, 2013 reprimand with the employer's director. Audio Record ~ 14:02 to 14:07, 16:09 to 16:48. The ALJ concluded that claimant's testimony denying she had given notice she would quit was unpersuasive because the record showed the employer had carefully chosen claimant for the field development manager position based on her qualifications and past working relationship with the employer, and had invested time and expense in helping her transition to the position in Chicago.<sup>1</sup> We agree with the ALJ reasoning that it would have been inconsistent for the employer to end claimant's employment based on claimant's alleged reason for the discharge.<sup>2</sup> Thus, we agree with the ALJ that, more likely than not, claimant notified the employer on December 11, 2013 that she was quitting work on December 14, 2013. However, the employer did not allow claimant to work through her notice period. Because claimant was willing to continue working for the employer until December 14, 2013, but was not allowed to do so by the employer, the December 11, 2013 work separation was a discharge.

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<sup>1</sup> Hearing Decision 14-UI-14852 at 3.

<sup>2</sup> *Id.*

The record shows the employer discharged claimant on December 11, 2013 because claimant planned to quit work on December 14, 2013, and the employer did not want to employ claimant for three additional days if she was not willing to continue working for the employer. Claimant's unwillingness to continue working for the employer for more than three additional days was not misconduct, defined as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. *See* OAR 471-030-0038(3)(a) (August 3, 2011).

However, ORS 657.176(8) provides that when an individual has notified an employer that she will quit work on a specific date, and the employer discharged her, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. Claimant notified the employer she would end her employment on December 14, 2013. The employer discharged her, not for misconduct, on December 11, 2013, less than 15 days prior to her planned quit date. Therefore, we must determine whether claimant's planned quit would have been 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). 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. The claimant has the burden to establish good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Claimant alleged that she did not tell the employer she would quit, and thus did not provide a reason why she planned to quit. However, based on the timing of claimant's decision to leave work, it is more probable than not that claimant planned to quit because her supervisor reprimanded her in front of a vendor for failing to train new employees about the employer's dress code. Claimant testified that she was upset about what occurred on December 10, 2013 because "she was working with brand new people and did not want to be embarrassed." Audio Record ~ 17:28 to 17:34. However, the record does not show that the director acted in an abusive manner towards claimant on December 10 or December 11, 2013. Although claimant may have preferred that the director of operations not reprimand her in front of a new business associate, the director's conduct was not so offensive that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant failed to establish that she had no reasonable alternative but to quit work because of the reprimand, or, therefore, that she had good cause to quit work for that reason.

In sum, claimant notified the employer of her intention to voluntarily quit work without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits

effective the week of her planned voluntary quit, the week from December 8, 2013 through December 14, 2013 (week 50-14).

**DECISION:** Hearing Decision 14-UI-14852 is affirmed.

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

**DATE of Service:** May 15, 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.