

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0653

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 91236). The employer filed a timely request for hearing. On March 18, 2014, ALJ Vincent conducted a hearing, and on April 3, 2014 issued Hearing Decision 14-UI-14203, affirming the Department's decision. On April 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Amerson Precision Sheet Metal, Inc. employed claimant as a welder from January 21, 2013 to October 9, 2013.

(2) In approximately August 2013, the employer's business slowed, and the employer took measures to ensure employment for its staff. After approximately a week, the employer's business resumed and the employer had full employment for its staff.

(3) On October 9, 2013, the production supervisor assigned claimant to perform non-welding work. Claimant was physically capable of the assigned work and possessed the necessary skills, but refused to do the work, without explanation. The production supervisor went to the office, and by the time he returned, claimant had packed his belongings and left the worksite.

(4) On October 10, 2013, claimant reported to the worksite to request his final paycheck. He never attempted to return to work for the employer. At all times relevant hereto, the employer had continuing work available to claimant.

(5) The employer did not lay off any employees during 2013. The production supervisor was not authorized to lay anyone off work.

CONCLUSIONS AND REASONS: 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 alleged that the production supervisor laid him off due to a lack of work. However, the employer rebutted that allegation with testimony establishing that the employer did not lack work in October 2013, the employer did not lay anyone off work in 2013, and, in any event, the production supervisor lacked the authority to lay anyone off. The employer's witness testified that the employer had continuing work available to claimant at the time of the work separation, making the separation a voluntary leaving under the applicable rules.

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.

Claimant disputed that he quit work, and failed to provide any evidence tending to show that he had good cause for doing so. To the extent we may reasonably infer that he quit work because of the assignment his production supervisor gave him on October 9th, claimant did not have good cause for quitting work. He was physically capable of doing the work and had the necessary skills. Nothing in this record suggests that the assignment was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work rather than do the assigned work.

To any extent claimant might have quit work because he mistakenly believed that the production supervisor had discharged him when assigning him the non-welding task on October 9th, claimant did not have good cause for quitting work. Rather than packing his personal belongings and leaving immediately, claimant had the option to ask the production supervisor for clarification, or to contact the production supervisor's superiors to confirm his employment status. He did not demonstrate that he had no reasonable alternative but to leave under the circumstances present at the time he left on October 9th.

Claimant voluntarily left work without good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-14203 is affirmed.

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

DATE of Service: May 21, 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.