

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0657

*Reversed
Disqualification*

PROCEDURAL HISTORY: On January 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140345). Claimant filed a timely request for hearing. On March 25, 2014, ALJ Wipperman conducted a hearing, and on April 2, 2014, issued Hearing Decision 14-UI-13967, concluding the employer discharged claimant, but not for misconduct. On April 22, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond its reasonable control prevented it from offering the information during the hearing. Claimant's written 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 her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Rogue Community College employed claimant as a part-time faculty advisor of student interns from October 16, 2011 to September 11, 2013. Claimant worked approximately 20 hours per week and was paid on an hourly basis.

(2) From the time of her initial hire, the employer offered claimant a new contract for her services each term of the academic year – summer, fall, winter and spring – contingent, in part, upon claimant's expression of interest. During the 2013 summer term, claimant "assume[d]" the employer would offer her a contract for the fall term. Transcript at 16, 24. However, claimant also worked part-time for Cascade Peaks Spirits (Cascade) as its chief executive officer (CEO), and in July 2013, Cascade's board of directors requested that claimant work full-time as CEO to obtain the capital funding necessary "to keep the business going." Exhibit 1.

(3) On August 15, 2013, the Cascade board of directors offered claimant a compensation plan for full-time work consisting of a percentage of any funding obtained which claimant agreed to even though she had been unsuccessful in obtaining funding since 2008 and had not been paid for her services since that time. On August 26, 2013, claimant gave the employer notice that she was quitting her faculty position after the summer term to work full time for Cascade. On September 11, 2013, claimant quit work with the employer for that reason.

(4) Continuing work with the employer was available when claimant quit.

CONCLUSIONS AND REASONS: We disagree with the ALJ. 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). “Work” means the continuing relationship between an employer and an employee. OAR 471-030-0038(1)(a). For a continuing employment relationship to exist, there must be some future opportunity for the employee to perform services for the employer. See *Traci A. Hammond* (Employment Appeals Board, 97-AB-873, June 5, 1997).

In Hearing Decision 14-UI-13967, after finding that claimant had worked for the employer as a faculty advisor since October 16, 2011, that the employer “would have permitted claimant to continue under a new contract” and that on August 26, 2013, claimant “informed [the] employer...[she would] conclude the employment relationship”, the ALJ concluded that claimant was discharged, reasoning that “completed work contracts are analyzed as though the claimant was discharged” and “claimant performed all her work” under her summer term contract. Hearing Decision 14-UI-13967 at 1-3. However, in so reasoning, the ALJ ignored the hearing record as a whole and the plain language of OAR 471-030-0038(1)(a) and (2)(a). Claimant did not dispute that a future opportunity for her to perform services for the employer would have existed after the summer term, contingent upon her expression of interest, or that the employment relationship would have continued after that time. In fact, she “assume[d]” the employer would offer her a contract for the fall term, which, presumably, was the reason why she gave the employer advance notice of her intention to quit. On this record, it is more likely than not that claimant could have and would have continued to work for the employer after September 11, 2013 had she not, as the ALJ found, informed the employer on August 26 that she would “conclude the employment relationship.” Consequently, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

Claimant quit her job with the employer to work full time for Cascade to obtain the capital funding necessary “to keep [that] business going.” However, viewed objectively, claimant left paid hourly work for the employer for employment with Cascade, a business on the verge of being shut down, under a compensation plan that would provide her with remuneration only if she obtained capital funding which neither she nor the Cascade board had been able to accomplish since 2008. Although claimant may have had a strong personal interest in giving that business a final chance to succeed, she failed to demonstrate that no reasonable and prudent part-time faculty advisor in her circumstances would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause under ORS 657.176(2)(c) and is disqualified from receiving unemployment insurance benefits until such time as she requalifies by earning four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-13967 is set aside, as outlined above.

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

DATE of Service: May 23, 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.