

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0658

Affirmed
Disqualification
Eligible Weeks 50-13 and 51-13

PROCEDURAL HISTORY: On February 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 155259). Claimant filed a timely request for hearing. On April 2, 2014, ALJ Lohr conducted a hearing, and on April 9, 2014 issued Hearing Decision 14-UI-14691, concluding that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause. On April 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Zones Inc. employed claimant as an account executive from July 8 through December 10, 2013.

(2) Claimant lived and worked for the employer in Oregon. The employer paid claimant \$3,416 dollars per month, including a \$500 per month draw that claimant would not have to repay if he continued to work for the employer for at least one year.

(3) When hired, claimant expected his monthly contribution to the employer's benefits package, which included health insurance, to be approximately \$100. His actual monthly contribution was approximately \$250 per month. Claimant asked the employer to pay at least \$150 of his monthly contribution to the employer's benefits package. The employer refused.

(4) In late November and early December 2013, claimant incurred a \$6,317 medical bill that his health insurer decided not to pay. Claimant appealed that decision.

(5) A friend of claimant's offered to allow him to live with her for free in Colorado until he found work there. Claimant accepted his friend's offer, and on December 10, 2013 notified the employer he was

quitting work, effective December 24, 2013. The employer responded by discharging claimant, effective immediately.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause.

The employer discharged claimant because he notified the employer he was quitting work, and not for misconduct, which is 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 where, as here, an individual has notified an employer that he will quit work on a specific date, and the employer discharged him, not for misconduct, no more than 15 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 he 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.

We therefore must determine whether claimant's planned quit would have been with good cause, which is defined 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.

At hearing, claimant testified that he would not have quit work if the employer had agreed to pay at least \$150 of his monthly contribution to the employer's benefits package. Transcript at 25. We therefore focus on the employer's refusal to do so as the reason claimant quit work. Claimant did not assert or show that the employer was legally obligated to pay a portion of his monthly contribution to the benefits package. Nor did claimant assert or show that the money he saved on housing by moving from Oregon to Colorado exceeded the \$3,416 per month he earned working for the employer. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer.

Claimant failed to establish that he had good cause to quit work. He therefore is disqualified from receiving benefits, except that, pursuant to ORS 657.176(8), he is eligible for benefits for the two weeks from December 8 through 21, 2013 (weeks 50-13 and 51-13).

DECISION: Hearing Decision 14-UI-14691 is affirmed.

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

DATE of Service: May 22, 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.