

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0878

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141511). Claimant filed a timely request for hearing. On May 5, 2014, ALJ Triana conducted a hearing, and on May 9, 2014 issued Hearing Decision 14-UI-17341, affirming the Department's decision. On May 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seaport Auto Wholesale, Inc. employed claimant from December 6, 2013 to December 14, 2013.

(2) On December 6, 2013, the employer hired claimant work as a sales manager at one of its dealerships.

(3) On December 13, 2013, the owner told claimant he could no longer work as a sales manager for the employer, but offered to allow claimant to continue working for the employer as a salesperson. Claimant had prior experience working as a salesperson for another employer.

(4) Claimant asked the general manager if he could work as a sales manager at another one of the employer's dealerships. The manager refused to allow claimant to continue working as a sales manager.

(5) Claimant did not want to work as a salesperson because he anticipated his pay would decrease if he worked as a salesperson. A sales manager earned five percent of gross sales, which was more than minimum wage. A salesperson earned commission, with guaranteed minimum wage. Claimant's only expense for work was approximately \$20 per week to commute to work.

(6) On December 14, 2013, claimant quit work to avoid a demotion.

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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011). Claimant could have continued to work for the employer for an additional period of time as a salesperson. Therefore, the work separation was a quit.

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 he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). OAR 471-030-0038(5)(d) (August 3, 2011) provides that 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 Department’s determination of the median rate of pay for similar work in the individual’s normal labor market area. However, OAR 471-030-0038(5)(d) applies only when the employer reduces the rate of pay for the position the individual holds, and not when an employee’s earnings are reduced as a result of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A).

Otherwise, “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 P3d 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 quit work to avoid being demoted from sales manager to salesperson because he believed his pay would decrease. In the present case, OAR 471-030-0038(5)(d) does not apply to claimant’s work separation because he quit work due to a reduction in the rate of pay as a result of a demotion from sales manager to salesperson, and not a reduction in his rate of pay for the sales manager position. The record shows it was probable that the demotion from sales manager to salesperson would have decreased claimant’s earnings. However, by quitting his job, claimant eliminated his earnings entirely, and he failed to show that the cost of working for the employer would have exceeded the remuneration he would have received. Although claimant disagreed with the demotion, he did not assert or show that it was unlawful. Absent such showings, we cannot find that claimant had no reasonable alternative but to quit work. Claimant could have continued to work for the employer as a salesperson.

We conclude that claimant quit work without good cause. Claimant is therefore disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-17341 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: June 30, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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