

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0892**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant not for misconduct (decision # 12238). The employer filed a timely request for hearing. On May 7, 2014, ALJ Wipperman conducted a hearing, and on May 8, 2014, issued Hearing Decision 14-UI-17067, concluding that claimant voluntarily left work without good cause. On May 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument 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. 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. In addition, claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Pointer Enterprises/McDonald's employed claimant from June 1, 2013 to March 25, 2014, last as general manager of a McDonald's restaurant in Gridley, California. Claimant earned \$15.13 per hour as a general manager, and worked 40 hours regular time and 5 hours overtime each week.

(2) The employer's operations manager met monthly with all the general managers whose work he supervised. At a monthly meeting with claimant during the early part of March 2014, the operations manager discussed his concerns about the restaurant claimant managed. Among the topics discussed were high food costs, cleanliness, and claimant's poor communication with restaurant staff.

(3) On March 20, 2014, claimant was arrested on a charge of battery. Claimant was briefly incarcerated and missed his work shift. On March 21, 2014, the employer suspended claimant until March 25, 2014, when he was scheduled to meet with the employer's owner and the operations manager.

(4) On March 25, 2014, claimant met with the employer's owner and the operations manager. The owner told claimant that the restaurant claimant managed was badly run, and that he (the owner) wanted to make a change. The owner explained he wanted to demote claimant to a position as assistant manager at a McDonald's Restaurant in Chico, California. As assistant manager, claimant would earn \$10 per hour and work an average of 30 to 35 hours per week. The distance between claimant's home and the Chico restaurant in which the employer wanted to place claimant was 37 miles each way; the cost of the commute would be approximately \$12 per day. Claimant had four children between the ages of four months and 11 years; his wife did not work outside the home. Claimant believed that he would be unable to support his family as an assistant manager because the salary was too low and the cost of commuting too high. Claimant told the employer he would not go to another restaurant. When the employer asked if claimant was quitting, claimant said he would take his check.

(6) The battery charges against claimant were dropped.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The nature of the work separation is at issue here. 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) (August 3, 2011). 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).

Claimant contended that the work separation was a "constructive termination" because the employer offered him the assistant manager position knowing that claimant would rather quit than accept the demotion. It is undisputed, however, that the employer had continuing work available for claimant. "Work" is not defined in terms of a particular position or set of duties with the employer; it is defined as the relationship between the parties. Claimant could have continued to work for an indefinite period as assistant manager. Claimant chose not to accept the demotion because he was dissatisfied with his potential earnings and the cost of the commuting to the new position. Because continuing work was available to claimant after March 25, 2014, and claimant chose not to work, claimant voluntarily left work under OAR 471-030-0038(2).

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). OAR 471-030-0038(5)(d) 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 median rate of pay for similar work in the individual's normal labor market area. However, OAR 471-030-0038(5)(d) does not apply where, as here, an individual's earnings are reduced as a result of a demotion. OAR 471-030-0038(5)(d)(A). A reduction in work hours does not constitute good cause for leaving work "unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

“Good cause” therefore 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 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.

Here, claimant asserted that he and his family could not afford a reduction in pay (from \$15.13 to \$10 per hour) and work hours (from 45 to 30-35 hours per week), and the expense of the commute (\$12 per day). Claimant failed to demonstrate that the reduction in work hours substantially interfered with his ability to find full time work, however. In addition, the record shows that the cost of working for the employer did not exceed the remuneration claimant would have received as an assistant manager, and, by quitting his job, claimant entirely eliminated his pay and reduced his family income to zero. Accordingly, claimant failed to establish that no reasonable and prudent person would have continued to work for the employer for an additional period of time. We conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-17067 is affirmed.

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

**DATE of Service:** July 3, 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](http://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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