

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0947

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73201). Claimant filed a timely request for hearing. On May 15, 2014, ALJ Logan conducted a hearing, and on May 16, 2014 issued Hearing Decision 14-UI-17835, affirming the Department's decision. On June 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. We considered claimant's written argument and the entire hearing record when reaching this decision.

**FINDINGS OF FACT:** (1) Masu Sushi Inc. employed claimant from May 15, 2010 to February 17, 2014 as a chef.

(2) On February 11, 2014, one of the employer's owners told claimant's coworker that the employer was "considering making a change," and that he was planning to meet with claimant after the busy Valentine's Day weekend to propose changes to claimant. The owner asked the coworker about the restaurant's ability to operate without claimant in the event claimant "reacted negatively" to the proposed changes. Transcript at 27.

(3) On February 12, 2014, a different coworker told claimant that the February 11 meeting between the owner and claimant's coworker had occurred, and that "he'd heard" the employer planned to discharge claimant. Transcript at 7, 8.

(4) On February 16, 2014, claimant noticed the owner had changed the restaurant's locks. Claimant saw the owner give one employee a key before the owner left for the night. Claimant left work at approximately 11:15 p.m.

(5) At 11:45 p.m. on February 16, 2014, the owner sent claimant a text message telling claimant he needed to meet with claimant the morning of February 17, 2014. Claimant and the owner agreed to meet at 10:00 a.m. at the restaurant. The owner intended to discuss changes to claimant's employment terms, but did not intend to discharge claimant unless claimant was unwilling to continue working under the new terms. Claimant had Mondays off from work, but sometimes went to the restaurant to do inventory.

(6) After arranging to meet with the owner on February 17, claimant spoke with the coworker who had met with the owner on February 11. The coworker told claimant that he believed the owner intended to discharge claimant. Exhibit 1.

(7) After claimant spoke with the coworker about his February 11 meeting with the owner, claimant's wife sent the owner's wife a text message stating, in relevant part, "Just got the news. Very sad to hear it." Exhibit 1.

(8) At 12:41 a.m. on February 17, 2014, claimant sent the owner a text message stating, "So I hear [you are] firing me. This is fine. Just mail me my check. Do you need my address?" Exhibit 1. The employer did not respond.

(9) At 8:00 a.m. on February 17, 2014, the owner's wife responded to the text message from claimant's wife, stating, in relevant part, "Morning. Yes it is very sad. I haven't had a chance to talk to [claimant] yet and I still hope to. We have been struggling for the last year with the finances at Masu. With rising food costs and [waste], [minimum] wage and the unfortunate weather we have had. . . . We just simply can't afford it right now." Exhibit 1.

(10) On February 17, 2014, claimant did not attend the 10:00 a.m. meeting at the restaurant. Claimant did not return to work after February 16, 2014.

(11) At 10:05 a.m. on February 17, 2014, claimant sent the owner an email, stating, "I have learned of my dismissal from my subordinates and received a similar confirmation from your wife. It is unfortunate to receive this information in such an unprofessional and humiliating manner. My subordinate cited Masu's financial inability to continue to pay my salary as the reason for my termination, which was also confirmed by your wife. Naturally, I will not be attending a dismissal meeting (falling on my day off at a business I am no longer employed with) clearly designed to further humiliate. Please do forward my final check expeditiously to [claimant's address]." The employer did not respond to claimant's email. Exhibit 1.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude claimant voluntarily left work without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) states that 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 work

separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the separation is a quit. OAR 471-030-0038(2)(a).

Claimant believed the owner planned to discharge him on February 17, 2014 based on the owner's actions, statements from the owner's wife, and hearsay from claimant's coworker. Transcript at 12. However, the owner testified at hearing that, although a decision to discharge claimant "could have been the end result of the [February 17] meeting" he arranged with claimant, the purpose of the February 17 meeting was to propose changes to claimant's terms of employment, and see how claimant reacted to those proposed changes. Transcript at 26. Claimant did not allege or establish that the owner or any other employee authorized to discharge him had told him he was discharged. Thus, based on the owner's firsthand, sworn testimony at hearing, the employer had not yet decided before the February 17 meeting that it would discharge claimant on February 17. Moreover, the owner's actions were not inconsistent with his testimony. The owner could have changed the locks and had the meeting with the coworker because he believed claimant might quit or he might have to discharge claimant, depending on claimant's reaction to changes to his employment. Thus, the record shows, at best, that claimant faced only the possibility of being discharged on February 17. The record does not show that the employer did not allow claimant to continue working. Because claimant could have still continued to work for the employer for an additional period of time, 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 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). "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.

To the extent claimant voluntarily left work because he assumed, incorrectly, that the employer had discharged him, claimant did not show he had good cause for leaving work. Rather than leaving work, claimant could have verified if his assumption was correct by asking the owner, rather than a subordinate coworker, about his employment status before he expressed his unwillingness to continue working. Claimant could have verified if continuing work was available by attending the meeting on February 17 or calling the owner. Claimant did not meet his burden to show he had no reasonable alternative but to leave work based on his assumption that the employer discharged him.

Claimant argued to EAB that he was discharged not for misconduct, but also argued, in the alternative, that he had good cause to leave work due to a "communication breakdown" between claimant and the owner that could damage his professional reputation. Written Argument at 10. Claimant argued that the owner told other employees it was going to discharge claimant, and this "undercut" claimant's position, and lead him to fear a loss of reputation. Written Argument at 10. The record does not establish that the owner told other employees it would discharge claimant. The record shows the owner had one discussion with one coworker about the potential business repercussions from the owner's proposed changes to claimant's employment. Objectively considered, claimant failed to show how the owner's discussion with the coworker would damage his reputation, especially where the record shows the owner's proposed changes were based on financial considerations.

In sum, claimant failed to show by a preponderance of evidence that no reasonable person would have continued to work for his employer for an additional period of time. Claimant therefore failed to establish that he quit work with good cause, and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-17835 is affirmed.

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

**DATE of Service:** July 11, 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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