EO: 200
BYE: 201502

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0996

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 155339). The employer filed a timely request for hearing. On March 25 and 29, 2014, ALJ S. Lee conducted a hearing, and on May 22, 2014 issued Hearing Decision 14-UI-18171, concluding that claimant quit work without good cause. On June 5, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asserted that the hearing proceedings were unfair or the ALJ was biased. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). As at hearing, claimant also argued that he was discharged, not for misconduct and, alternatively, that he quit work with good cause. However, 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). His 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 claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Municipal Employees employed claimant from October 17, 2007 to January 7, 2014, last as a field representative.

(2) In or about October 2013, the employer's business manager notified its executive board that he intended to retire before his term expired. On October 22, 2013, claimant notified the executive board that he wanted to be appointed interim business manager until a business manager was elected in June

2014. The executive board appointed another employee to act as interim business manager if the current business manager retired before his term expired.

(3) In November 2013, claimant notified the executive board that he intended to run for business manager in June 2014. Neither the executive board nor the business manager wanted claimant to run for business manager, and the business manager discouraged claimant from doing so. However, claimant remained determined to run for business manager in June 2014.

(4) Only current employees who had worked for the employer for at least two years could run for business manager. On November 27, claimant sent the business manager an email stating that if the executive board did not want claimant to run for business manager, claimant would need an offer he "can't refuse," which "cannot include resignation," given that claimant already has given notice that he intended to run for business manager in June 2014. Exhibit 8.

(5) In early December 2013, however, claimant offered to resign when he found another job if the employer agreed to a severance package of $15,000 along with a "cash out of the legally required balances in my vacation, retirement contributions, healthcare contributions paid to the end of the month in which I resign," and "credit and cash out of hours to the end of the month when I submit my resignation." Exhibit 11. In exchange, claimant agreed not to file any lawsuits for grievances against the employer before, during or after leaving work.

(6) Claimant gave the employer until December 10, 2013 at 6:00 p.m. to respond to the offer, noting that he intended to start his campaign for business manager the next day with a "mailer." Exhibit 11. On December 9, 2013, claimant sent the business manager an email stating that he would "execute my promise beginning tomorrow night at 6 pm." Exhibit 13. The employer prohibited candidates from using its membership mailing list to mail campaign material to its members. The business manager replied with an email stating that claimant was not to "put out any campaign material out to the membership." Exhibit 13. On December 11, 2013, claimant notified the employer that he had not mailed the campaign material to the employer's members.

(7) Claimant and the employer began negotiating the terms of an agreement for claimant to resign in exchange for a severance package. The employer relieved claimant of his duties while negotiations were pending. On December 29, 2013, the employer canceled claimant's work cell phone service. On December 30, 2013, the employer set claimant's work email to automatically reply to incoming emails with an email stating that claimant no longer worked for the employer. However, the employer was willing to allow claimant to return to work if they did not reach an agreement.

(8) On January 7, 2014, claimant agreed in writing to terminate his employment that day and release claims against the employer in for a severance package of $10,000 along with health and welfare benefits through the end of the month, and other consideration.

(9) Claimant resigned to avoid the possibility that the employer would terminate his employment unilaterally. However, claimant could have continued to work for the employer for an additional period of time after January 7, 2014 if he had not resigned, and the employer did not plan to terminate his employment unilaterally in the future.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit 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 separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a).[1] A claimant who quits work 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). "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.

At hearing, claimant argued that the employer discharged him to prevent him from running for business manager in June 2014. However, the record shows that claimant could have continued to work for the employer for an additional period of time after January 7, 2014 if he had not agreed to resign on that date. Claimant therefore quit work to avoid the possibility of being discharged in the future. However, claimant failed to show that the employer's executive board, current business manager, or incoming business manager told claimant he would be discharged before or after the June 2014 election. Nor did claimant show that if the employer later decided to discharge claimant, he could not have negotiated a resignation in lieu of termination or a similar severance package. Absent a showing that claimant's discharge was reasonably certain and likely imminent, and that not quitting work likely would have resulted in a discharge on his employment record or the loss of his severance package, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-18171 is affirmed.

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

DATE of Service: July 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 court.oregon.gov. Once on the website, click on the blue tab for

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[1] For purposes of OAR 471-030-0038(2), "work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a)

"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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