

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1002**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81824). Claimant filed a timely request for hearing. On May 30, 2014, ALJ Triana conducted a hearing, and on June 6, 2014 issued Hearing Decision 14-UI-19212, affirming the Department's decision. On June 9, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) PDX Enterprise Solutions employed claimant from January 27, 2014 to April 14, 2014 as a business development specialist.

(2) Claimant agreed at hire to work on a commission-only basis. Approximately two weeks after his employment began, claimant asked the owner if his compensation could be changed to an hourly rate of \$12.50 per hour, plus a flat fee commission per sale. The owner offered to pay claimant \$10 per hour plus a flat fee commission per sale. Claimant refused the owner's offer, and continued to work on a commission-only basis.

(3) On March 27, 2014, claimant discussed his compensation with his supervisor. The supervisor offered to change claimant's compensation to \$10.50 per hour plus a flat fee commission per sale. The supervisor did not discuss claimant's request for a change in his pay with the owner, and the owner did not approve a change in claimant's compensation.

(4) From April 7 to April 11, 2014, the employer's owner was out of town. Claimant sent the owner an email on April 10, 2014 stating that the supervisor had offered to change claimant's compensation. The owner responded that he did not know about the offer and would discuss the matter with claimant on April 11, 2014. Claimant was unable to meet with the owner when he returned to work on April 11, 2014.

(5) On April 14, 2014, the owner met with claimant. The owner told claimant he was eliminating claimant's position, and offered claimant continuing work in a different sales position, completing

outbound calls for \$10 per hour. Claimant had earned less than \$10 per hour working as a business development specialist. Claimant asked if the employer would pay him the hourly rate he believed the employer owed him, based on the supervisor's offer, for the first two weeks of April. The owner refused to pay claimant an hourly rate for the first two weeks of April. Claimant stood up, said thank you to the owner, left the meeting, removed all his belongings from his desk, left work, and did not return.

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

The first issue is the nature of the work separation. 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).

Claimant testified that the owner told him he was eliminating claimant's sales team, and he understood he was being discharged. Transcript at 27. The employer's owner testified that he did not tell claimant he was being discharged, and that claimant got up and left the meeting mid-way through the meeting, after he told him he would not honor the supervisor's offer to change claimant's pay. Transcript at 10 to 11. Because the record shows that claimant could have continued to work for the employer in a different position 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 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.

Claimant's employment ended because he misunderstood or assumed that the employer had discharged him when the owner decided to eliminate his position. Thus, the issue is whether no reasonable and prudent person would have confirmed he was willing to work. Claimant testified that he would have been willing to continue working for the employer had he understood the employer had continuing work available for him. Transcript at 23. The employer did not tell claimant he was discharged. Rather than leaving the meeting with the owner, and his job, claimant had the reasonable alternative of remaining for the rest of the meeting with the owner to clarify that he was willing to continue working for the employer.

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

**DECISION:** Hearing Decision 14-UI-19212 is affirmed.

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

**DATE of Service:** July 16, 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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