

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1066

*Modified  
Disqualification*

**PROCEDURAL HISTORY:** On May 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83418). Claimant filed a timely request for hearing. On June 11, 2014, ALJ Micheletti conducted a hearing, and on June 12, 2014 issued Hearing Decision 14-UI-19492, affirming the Department's decision. On June 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rosboro LLC employed claimant as a union-represented laborer in its lumber mill from January 13, 2013 through April 10, 2014.

(2) Claimant's medical history included a diagnosis of alcoholism and anxiety disorder. Claimant experienced stress and anxiety at work due to his workload. Claimant believed the employer would discipline him for failure to meet its performance standards.

(3) On or about April 4, 2014, claimant gave the employer two-week notice that he would resign effective April 18, 2014 to avoid a discharge. Audio at 4:15. Claimant did not discuss his disciplinary concerns with his supervisor, the employer's human resources department, or his union to request accommodation for his workload concerns. Claimant did not seek medical attention, medical leave of absence or transfer to address his workload concerns.

(4) The employer accepted claimant's resignation and discharged him without explanation on April 10, 2014, eight days prior to claimant's announced resignation date.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause.

The first issue in this case is whether claimant quit work or was discharged. 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).

The record shows claimant submitted his two-week notice to resign on or about April 4, 2014 and informed the employer that his last day of work would be April 18, 2014. Audio at 4:15. Both parties agree that the employer did not allow the claimant to continue working until April 18, 2014, by discharging him without explanation on April 10, 2014. Because claimant was willing to continue working for the employer until April 18, 2014, but was not allowed to do so by the employer, the April 10, 2014 work separation was a discharge.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. Absences or tardiness due to an illness or injury is not misconduct. *See accord* OAR 471-030-0038(3)(b).

The employer discharged claimant without explanation on April 10, 2014, after claimant gave the employer notice he would resign as of April 18, 2014. To the extent the employer discharged claimant on April 10, 2014 because he gave a two-week notice of his intent to resign on April 18, 2014, claimant's conduct was not willful or wantonly negligent misconduct.

However, ORS 657.176(8) provides that when an individual has notified an employer that he will quit work on a specific date, and the employer discharged him, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that he is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. Claimant notified the employer he would end his employment on April 18, 2014. The employer discharged him, not for misconduct, on April 10, 2014, less than 15 days prior to his planned quit date. Therefore, we must determine whether claimant's planned quit would have been without good cause.

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). 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. The claimant has the

burden to establish good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

We agree with the ALJ that claimant did not provide sufficient evidence to show that a reasonable and prudent person with anxiety disorder would have no reasonable alternative but to quit work in his situation. The ALJ correctly identified alternatives available to claimant at the time he left work. Claimant did not demonstrate that these alternatives were futile. Claimant voluntarily left work without good cause.

In sum, claimant notified the employer of his intention to voluntarily quit work without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits effective the week of his planned voluntary quit, the week from March 16, 2014 to March 22, 2014 (week 12-14).

**DECISION:** Hearing Decision 14-UI-19492 is modified, as outlined above.

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

**DATE of Service:** July 21, 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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