

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1201

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80737). Claimant filed a timely request for hearing. On July 1, 2014, ALJ S. Lee conducted a hearing, and on July 9, 2014 issued Hearing Decision 14-UI-21152, affirming the Department's decision. On July 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) McFarlane's Bark, Inc. employed claimant from March 13, 2013 to April 16, 2014 as a dispatcher and salesperson.

(2) One of the employer's owners was its president and managed its trucking fleet and drivers. Another owner managed the sales office, sale house and dispatchers. Claimant received instructions from both owners. The owners frequently changed its procedures and gave claimant instructions that claimant perceived to be confusing or contradictory. Claimant sometimes contacted the president or the human resources manager when she had concerns or questions about her duties or instructions.

(3) On occasion, claimant made mistakes in performing her dispatch duties when the managers had changed procedures or their instructions were unclear. The employer never disciplined claimant for the mistakes.

(4) Claimant occasionally cried or felt nauseous due to stress from work.

(5) On or about April 2, 2014, claimant met with the owners to request that her job duties be limited to sales duties, and no dispatch duties. Instead, the owners stated they would present claimant an offer for a lead dispatch position, with a higher salary, in approximately one week.

(6) On April 16, 2014, the employer's sales manager implemented a new practice requiring all drivers who were completing deliveries in the Molalla, Oregon area to pick up product at the employer's Molalla location and deliver it on their return trip to the location where claimant worked. Claimant told

the sales manager the new practice would delay the drivers' delivery times to customers that had orders already scheduled. The sales manager told claimant she needed to contact customers to cancel some deliveries and address those customers' complaints. Claimant was dissatisfied with having to cancel customers' deliveries. Claimant did not discuss her concerns about the new practice with anyone other than the sales manager.

(7) On April 16, 2014, the employer had not yet presented its offer for the lead dispatcher position to claimant because it was still deciding the terms of the offer.

(8) On April 16, 2014, claimant quit work because she was dissatisfied with how the owners frequently changed their procedures, and because the employer did not offer her a lead dispatcher position when she expected to receive the offer.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she 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). "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 her employer for an additional period of time.

Claimant quit work because the employer frequently changed its procedures, and did not offer her a lead dispatcher position within the time period she expected. To the extent claimant quit work because the employer changed its procedures, claimant did not have good cause for leaving work. The record fails to show that claimant's working conditions were so onerous that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant found the frequent changes frustrating and difficult to understand, but did not show that the changes posed a risk to her health or safety, or that the employer disciplined her when she made errors. When the sales manager changed the delivery procedures on April 16, claimant could have discussed her concerns with the trucking fleet manager or the human resources manager, as she had done in the past. Claimant failed to meet her burden to establish that the employer's changes in procedures were of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

To the extent claimant quit work because the employer failed to promote her to lead dispatcher, she did not have good cause for leaving work. The owners were still considering the terms of the promotion, which therefore remained a possibility. Regardless, as noted above, claimant failed to show that continuing to work for the employer as a dispatcher and salesperson was so onerous that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant failed to establish good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 14-UI-21152 is affirmed.

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

DATE of Service: August 12, 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 “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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.