

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1337

*Hearing Decision 14-UI-22951 Affirmed  
Disqualification*

*Hearing Decision 14-UI-22950 Undisturbed*

**PROCEDURAL HISTORY:** On February 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 100254). On February 26, 2014, the Department served notice of an administrative decision assessing a \$2,636 overpayment, 21 penalty weeks, and a \$395.40 monetary penalty (decision # 195057). Claimant filed timely requests for hearing on both decisions. On June 5, 2014, ALJ Kirkwood conducted hearings and issued Hearing Decision 14-UI-19082, affirming decision # 100254, and Hearing Decision 14-UI-19084, assessing a \$2,382 overpayment, and no penalty weeks or monetary penalty. On June 11, 2014, claimant filed applications for review of Hearing Decisions 14-UI-19082 and 14-UI-19084 with the Employment Appeals Board (EAB). On July 17, 2014, EAB issued Appeals Board Decisions 2014-EAB-1020 and 2014-EAB-1021, reversing Hearing Decisions 14-UI-19082 and 14-UI-19084, remanding these matters to the Office of Administrative Hearings (OAH) for further proceedings. On August 5, 2014, ALJ Kirkwood conducted hearings, and on August 6, 2014 issued Hearing Decision 14-UI-22951, again affirming decision # 100254, and Hearing Decision 14-UI-22950, again assessing a \$2,382 overpayment, and no penalty weeks or monetary penalty. On August 9, 2014, claimant filed an application for review of Hearing Decision 14-UI-22951 with EAB.

EAB considered the entire hearing record and claimant's written argument.

**FINDINGS OF FACT:** (1) FlashtoTalk LLC employed claimant as a part-time employee from February 15 through May 19, 2013.

(2) The employer paid claimant \$10 per hour worked. Claimant's only cost of working for the employer was \$5 per day to commute to and from work by bus. Claimant searched for other work during business hours by contacting prospective employer in person. During non-business hours, he searched for work online.

(3) In mid-May 2013, the employer gave claimant the option of reducing his hours to a minimum of four hours per day, one day per week, or being laid off from work. Claimant chose to be laid off from work. At the employer's request, claimant submitted a resignation letter stating that he was choosing to be laid off rather than accept the reduction in hours.

**CONCLUSIONS AND REASONS:** Claimant quit work without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) provides 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). 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 she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" generally 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 quit work. OAR 471-030-0038(4). However, if an individual quits work due to a reduction in hours, he has quit work without good cause unless continuing to work substantially interferes with his return to full time work, or the cost of working for the employer exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

In the present case, it is undisputed that claimant could have continued to work for the employer by accepting a reduction in hours, and that he was unwilling to do so. The work separation therefore is a quit, and not a discharge. In Hearing Decision 14-UI-22951, the ALJ concluded that claimant quit work without good cause under both OAR 471-030-0038(4) and OAR 471-030-0038(5)(e).<sup>1</sup> However, OAR 471-030-0038(5)(e) specifically states that where, as here, an individual quits work due to a reduction in hours, he "has quit work without good cause" unless the requirement of OAR 471-030-0038(5)(e) are met. The ALJ therefore erred in analyzing claimant's decision to quit work under OAR 471-030-0038(4), and we therefore analyze claimant's decision to quit work exclusively under OAR 471-030-0038(5)(e).

In the present case, the reduction in hours to a minimum of four hours per day, one day per week, did not result in the cost of working for the employer (\$5 per week) exceeding the remuneration received (\$40 per week). Nor did claimant show that working for the employer one day per week substantially interfered with his ability to search for full time work. Claimant therefore quit work without good cause, and is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-22951 is affirmed. Hearing Decision 14-UI-22950 remains undisturbed.

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

**DATE of Service:** September 4, 2014

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<sup>1</sup> Hearing Decision 14-UI-22951 at 3.

**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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