

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1339

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On June 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 143052). Claimant filed a timely request for hearing. On July 16, 2014, ALJ Wyatt conducted a hearing, and on July 23, 2014 issued Hearing Decision 14-UI-22029, affirming the Department's decision. On August 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Motorcycle Superstore Inc. employed claimant from September 21, 2008 to June 3, 2014.

(2) Claimant initially worked for the employer as a purchasing assistant. In April 2012, the employer hired a new purchasing manager without posting the open buyer position internally or externally. In July 13, 2013, claimant applied for a purchasing manager position with the employer, but the employer did not interview her for the position, and hired another person.

(3) In October 2013, the employer changed the "purchasing manager" job title to "buyer." Transcript at 10. Claimant's job title did not change, and the employer continued to pay claimant \$15 per hour. In April 2014, claimant complained to the employer that she was underpaid. The employer changed claimant's job title to "assistant buyer" and increased her pay to \$16 per hour, although the wages of other employees were frozen. Transcript at 26.

(4) On May 19, 2014, claimant met with the employer's vice-president of operations, claimant's direct supervisor, and the employer's human resource generalist. At the meeting, claimant told the managers that she was performing the work of a buyer and training new buyers, and that she was not paid appropriately for this work. Although there was some discussion of providing training opportunities for claimant, claimant did not feel that the managers satisfactorily responded to her concerns.

(5) Sometime after the May 19, 2014 meeting, the employer posted an open buyer position. Claimant applied for the job. Although the employer interviewed claimant, it hired another woman for the position.

(6) On June 3, 2014, claimant notified the employer in writing that she was quitting work. Claimant asserted in her resignation letter that the employer was discriminating against her and taking advantage of her in her current position. Claimant specifically asserted that she was performing the work of the buyer, and that the employer underpaid her for her work. Claimant also asserted that the employer had not considered her for open purchasing manager or buyer positions because she was a woman and single mother in a difficult economic situation, and poor job market. The employer accepted claimant's resignation, effective that day.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant failed to establish she quit work with good cause.

In written argument, as at hearing, claimant argued that she was discharged. 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. *Id.*

At hearing, claimant testified that she was willing to continue working for an additional period of time after June 3, 2014, until she finished training two new employees. Transcript at 19. However, in submitting her resignation letter, claimant allowed the employer to choose the date she would leave work. Thus, for purposes of this determination, claimant agreed to leave work on June 3, 2014, when the employer accepted her resignation, effective that day. The work separation therefore is a quit. *See accord Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996) (offer to work until no longer needed or replacement found was a quit when employer selected claimant's last day of work).

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 asserting that the employer underpaid her, and did not consider her for open purchasing manager or buyer positions because she was a woman and single mother in a difficult economic situation, and poor job market. However, the employer's human resources generalist denied the allegation,¹ asserting that they hired the woman with the best qualifications for the position. We find the evidence on that issue, at best, equally balanced. Absent a preponderance of evidence showing the employer was discriminating against claimant, its failure to promote her or further increase her rate of pay were not circumstances of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant therefore failed to establish that she quit work with good cause, and she is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-22029 is affirmed.

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

DATE of Service: September 15, 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.

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¹ Transcript at 25-27, 29, 31-32.