

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1342

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111644). Claimant filed a timely request for hearing. On July 30, 2014, ALJ Seideman conducted a hearing, and on August 5, 2014 issued Hearing Decision 14-UI-22828, affirming the Department's decision. On August 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Salem Auto Body & Paint Works employed claimant from January 2014 to May 21, 2014 as a full time painter helper.

(2) On Monday, May 12, 2014, claimant told the shop foreman he was unable to work due to illness. The shop foreman told claimant the employer was not busy, and there was no work for claimant on May 13, 2014. The shop manager instructed claimant to call the employer on May 13 to ask if there was work for claimant on May 14, 2014.

(3) On May 13, 2014, claimant called the employer, and the production manager told claimant the employer was not busy and did not have work for claimant to perform on May 14, 2014.

(4) On May 14, 2014, the shop foreman left claimant a voicemail in the morning asking claimant to report to work because the employer had work for claimant. Claimant called the employer later that day and told the production manager he was unable to work on May 14 because he was working on another job, and would not be able to work until completed that job.

(5) On Friday, May 16, 2014, during business hours, the employer's production manager left claimant a voicemail message asking claimant to report to work because it had work for claimant. Claimant did not return the production manager's call during business hours.

(6) On May 16 and May 18, 2014, claimant attempted to call the production manager on the manager's personal telephone after the employer's business was closed. The production manager did not answer

his personal telephone when claimant called because he did not recognize claimant's telephone number. Claimant did not leave a voice message.

(7) On Monday, May 19, 2014, claimant attempted to call the production manager on the manager's personal telephone during business hours, but did not speak with the production manager or leave a message.

(8) On May 21, 2014, the employer called claimant and left claimant a voice message asking claimant where to send his final paycheck. Claimant did not return the employer's call.

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

The first issue in this case 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).

At hearing, claimant argued that he did not quit, asserting that the employer's production manager told him on May 14, 2014 that the employer would contact claimant when it needed him to work, and never called him again. Transcript at 6, 7. Claimant further asserted that he tried to "reach" the employer after May 14, 2014, but was unable to do so. Transcript at 15. However, the record shows the employer had continuing work available for claimant because it offered him work on May 14 and 16. Claimant did not return the employer's May 16 message or otherwise speak with the employer again after May 14. Although claimant may have been willing to continue working for the employer, the work separation occurred because he failed to communicate his willingness to work, and not because the employer prevented him from working. Because the record shows claimant could have continued to work for the employer 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 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.

We infer that claimant quit because he mistakenly assumed the employer discharged him. However, the employer offered claimant work on May 14 and 16. Claimant refused work on May 14 and did not return the employer's call during business hours on May 16, or contact the employer during business hours on May 18. Claimant did not call the employer's business telephone number on May 16, 18 or 19, and did not leave a voice message on the production manager's personal telephone. Rather than assuming the employer had discharged him, or allowing the employer to assume he had quit, claimant

had the reasonable alternative of contacting the employer by calling its business telephone number, or visiting the workplace, to explain he was willing to work. Claimant failed to show that no reasonable and prudent person would have done so in order to clarify that he had not quit work, and 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-22828 is affirmed.

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

DATE of Service: September 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. 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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