

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-1386**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On June 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133001). Claimant filed a timely request for hearing. On July 31, 2014, ALJ Wiperman conducted a hearing, and on August 4, 2014, issued Hearing Decision 14-UI-22715, affirming the Department's decision. On August 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Menlo Park Liquor employed claimant as its manager from January 2, 2001 to March 31, 2014. Claimant also was the sole owner of the employer.

(2) Claimant sold the business, effective April 1, 2014, to a buyer who continued to operate the business as a new entity, Menlo Park Beverage. When claimant sold the business, she knew her employment with Menlo Park Liquor would end on March 31, 2014. Claimant sold the business to retire, avoid the investment of additional capital and because she believed the value of the business would decline over time.

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

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; 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, the work separation is a discharge. OAR 471-030-0038(2) (August 3, 2011).

As the employer's sole owner, claimant mutually agreed to sell the business to a new owner; the new owner would operate it as a new entity and under a new name, effective April 1, 2014. Claimant knew, therefore, that as of April 1, she no longer would be employed. Her agreement to train the new owner through April 5, 2014, at no compensation, does not change the fact that she voluntarily agreed that on March 31, 2014 her employment with the employer would end. But for that voluntary decision, claimant could have continued to work for the employer for an indefinite period of time. Accordingly, under the cited rule, the work separation was a voluntary leaving. *See, accord, Employment Department v. Hemke*, 155 Or App 303, 963 P2d 750 (1998) (where claimant was the sole corporate shareholder and mutually agreed to sell his interest to another and remain as a consultant for three months at no compensation, work separation was a voluntary leaving); *Employment Department v. Shurin*, 154 Or App 352, 959 P2d, 637 (1998) (where claimant was the sole corporate shareholder and chose to dissolve his professional corporation, of which he was an employee, leaving claimant without an employer, the work separation was a voluntary leaving).

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work for business reasons and because she intended to retire. However, viewed objectively, she failed to show that no reasonable and prudent person in her circumstances, interested in investing additional capital and maintaining employment rather than retiring, would have done so and continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefits from work in subject employment.

**DECISION:** Hearing Decision 14-UI-22715 is affirmed.

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

**DATE of Service:** September 22, 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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