

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1661

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 133432). The employer filed a timely request for hearing. On October 1, 2014, ALJ Lohr conducted a hearing, and on October 3, 2014 issued Hearing Decision 14-UI-26384, concluding that claimant quit work without good cause. On October 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On October 21, 2014, EAB mailed or emailed notice of receipt of claimant's application for review to the parties.

EAB considered the entire hearing record. Claimant submitted written argument with her application for review, but failed to certify that she provided a copy to the other parties. Claimant submitted another written argument, which EAB received 22 days after mailing or emailing the notice of receipt of the application for review to the parties. The employer submitted written argument, which EAB received 27 days after mailing or emailing the notice of receipt of the application for review to the parties. OAR 471-041-0080(2) (October 29, 2006) states that a party's written argument will not be considered unless it includes a statement that a copy has been provided to the other parties, and is received within 20 days of the date EAB mails or emails the notice of receipt of the application for review to the parties. EAB therefore did not consider the parties' written arguments when reaching this decision.

**FINDINGS OF FACT:** (1) Columbia Leadership Development LLC employed claimant from September 1, 2012 to July 31, 2014.

(2) Claimant lived and worked for the employer in Oregon. On June 13, 2014, claimant told the employer's owner that she was quitting work on June 27, 2014 to move to Missouri to pursue a romantic

relationship with a person she met on the internet. The owner “express[ed] some dismay” over the fact that claimant was quitting work in two weeks. Transcript at 30. Claimant offered to continue working for the employer from Missouri. The owner agreed to allow claimant to continue working for the employer from Missouri until the owner decided that claimant’s services were no longer needed.

(3) Claimant continued working for the employer in Oregon until she moved to Missouri. She continued working for the employer from Missouri until July 31, 2014, at which time the owner told claimant her services were no longer needed.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant quit work without good cause.

The primary issue in this case is whether claimant quit work or was discharged. 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) (August 3, 2011). 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed.

At hearing, claimant testified that on June 13, 2014, she told the employer’s owner she was moving to Missouri on June 27, 2014, and that the owner agreed to allow her to continue working for the employer from Missouri through November 2014 or longer. Transcript at 14-17. However, the employer’s owner and its other witness, who was present during claimant’s conversations with the owner, testified that claimant told the employer’s owner she was quitting work on June 27, and that when claimant offered to continue working for the employer from Missouri, the owner agreed to allow claimant to do so until the owner decided claimant’s services were no longer needed. Transcript at 5-6, 7-8, 29-34, 37-40. Absent a basis for concluding that the employer’s witnesses were not credible, their testimony outweighs claimant’s testimony to the contrary. Although claimant’s witness testified that the owner told her that claimant would work for the employer through November 2014, the owner denied telling her that, and we find the evidence on that issue equally balanced. Transcript at 44-46, 49. Nor is whether the owner initially intended to allow claimant to work through November material to whether she agreed to do so.

In sum, the preponderance of evidence in the record shows that on June 13, 2014, claimant told the owner she was quitting work on June 27, and that when claimant offered to continue working for the employer from Missouri, the owner agreed to allow claimant to do so until the owner decided claimant’s services were no longer needed. The mere fact that the employer agreed to extend claimant’s notice period to a date of the employer’s choosing does not change the nature of the work separation from a quit to a discharge. *See accord Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999) (claimant quit even though he changed his mind about leaving and the employer refused to allow him to rescind his resignation); *J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (claimant’s work separation was a voluntary leaving, where he gave notice of his intent to quit work, but later agreed to his supervisor’s suggestion to accelerate the separation date); *Smith v. Employment Division*, 34 Or App 623, 627, 579 P2d 310 (1978) (claimant’s work separation was a voluntary leaving, where she gave notice of her intent to quit work, and agreed with her employer on a mutually acceptable separation date).

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 to move to Missouri to pursue a romantic relationship with a person she met on the internet. Claimant did not assert or show that their relationship was such that no reasonable and prudent person would have remained in Oregon and 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 is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-26384 is affirmed.

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

**DATE of Service:** December 3, 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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