

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1682

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95515). Claimant filed a timely request for hearing. On October 15, 2014, ALJ Holmes-Swanson conducted a hearing, and on October 17, 2014 issued Hearing Decision 14-UI-27092, affirming the Department's decision. On October 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Wise Women Care Associates LLC employed claimant from April 4, 2014 to August 11, 2014 as a billing manager.

(2) In June and July 2014, the employer's director warned claimant that her productivity and communication did not meet the employer's expectations, and that she was dissatisfied that claimant had not submitted billing reports requested by the employer.

(3) On August 1, 2014, the director approved claimant's request to work an alternate schedule during the week of August 3, 2014 while claimant's foster child was placed in her home. At 8:30 p.m. on August 3, 2014, claimant told the director and office manager she was unable to work during that week due to the foster child placement, but did not discuss the matter further with the director. The director was dissatisfied that claimant failed to discuss the matter further with her before she took the week of August 3, 2014 off from work.

(4) On August 11, 2014, claimant returned to work. The employer's director told claimant she was dissatisfied with claimant's job performance and lack of communication, and that the employer was going to transfer some of claimant's job duties to another employee. Claimant responded, "I cannot do this anymore," and gave the director her office keys. Transcript at 18. The director did not tell claimant she was discharged or request her keys.

(5) Claimant began to pack her belongings. The director went to claimant's office and told claimant she did not have to leave, and could continue working for the employer in a different position. Claimant refused the offer, continued to pack her things, and left work.

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

At hearing, the parties disagreed about whether claimant quit work or 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 work separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the separation is a voluntary leaving. OAR 471-030-0038(2)(a).

At hearing, claimant testified she believed the employer discharged her because the director told her the employer "would have to terminate her," and asked for the keys to the office. Transcript at 5, 11. However, the director testified that she never told claimant she was discharged or asked for claimant's keys, but instead told claimant the employer would have to discharge her unless she gave up her managerial duties and improved her performance. Transcript at 18. It was undisputed that the director returned to claimant's office shortly after her initial meeting with claimant and told claimant she could continue working for the employer as a medical biller. Transcript at 11, 18; Exhibit 1. The record therefore shows claimant could have continued to work for the employer for an additional period of time. Thus, the work separation is a voluntary leaving.

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 P2d 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.

We infer that claimant quit work because she was frustrated that the director told her she was dissatisfied with claimant's work performance and was going to take away some of her managerial duties. However, an employer has the right to modify an employee's job duties based on its assessment of the employee's work performance. Claimant failed to show that the director's behavior toward her was such that no reasonable and prudent person would have accepted the employer's modification of her job duties and continue to work for the employer for an additional period of time. Thus, claimant voluntarily left work without good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-27092 is affirmed.

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

DATE of Service: December 9, 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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