

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1709

*Reversed
Disqualification*

PROCEDURAL HISTORY: On September 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 155551). Claimant filed a timely request for hearing. On October 14, 2014, ALJ M. Davis conducted a hearing, and on October 15, 2014 issued Hearing Decision 14-UI-26940, concluding the employer discharged claimant, not for misconduct. On October 30, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) St Andrew Lutheran Church employed claimant from September 1, 2013 to August 15, 2014.

(2) Claimant initially worked for the employer as an on-call substitute teacher. As of September 13, 2013, claimant worked for the employer as a floater teacher, working 25 hours per week for \$12 per hour. Claimant worked for the employer as a floater teacher through the end of the 2013-2014 school year. During that time, employer reduced claimant's hours to 22.5 per week, and then to 20 per week.

(3) During summer 2014, claimant again worked for the employer as an on-call substitute for \$12 per hour. Claimant worked an average of 6 to 8 hours per week. Claimant expected to work 20 or more hours per week as a floater teacher again during the 2014-2015 school year.

(4) On August 15, 2014, the employer informed claimant that she would not be allowed to work as a floater teacher during the 2014-2015 school year, but could work for the employer as an on-call substitute teacher. Claimant was unwilling to work for the employer as an on-call substitute teacher during the 2014-2015 school year, and declined to do so.

CONCLUSIONS AND REASONS: We agree with the Department, and not the ALJ, that claimant quit work without good cause.

In Hearing Decision 14-UI-26940, the ALJ concluded that the August 15, 2014 work separation was a discharge because the employer no longer had work available for claimant as a floater teacher.¹ However, OAR 471-030-0038(2)(b) (August 3, 2011) provides that the work separation is a discharge 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. 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). Here, it is undisputed that claimant could have continued to work for the employer for an additional period of time after August 15, 2014 if she had agreed to work as an on-call substitute teacher during the 2014-2015 school year, but was unwilling to do so. The work separation therefore is a quit, and not a discharge.

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. If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

At hearing, claimant testified that she was unwilling to work for the employer as an on-call substitute teacher during 2014-2015 school year because she would have been working less than the 20 hours per week she worked as a floater teacher at the end of the 2013-2014 school year. Transcript at 12-13. However, the employer’s head teacher testified that claimant would have worked more than 20 hours per week as an on-call substitute teacher during the 2014-2015 school year. Transcript at 29-31. The evidence on that issue is equally balanced, and claimant therefore failed to show by a preponderance of evidence that the employer reduced her hours. In addition, although claimant testified that working significantly less than 20 hours per week was not “sustainable,”² she did not assert or show that the cost of working as an on-call substitute teacher exceeded the amount of remuneration she received, or that continuing work as an on-call substitute teacher substantially interfered with her search for other work, or therefore her return to full time work. Thus, even if the employer reduced claimant’s hours, she failed to establish that she quit work without good cause under OAR 471-030-0038(5)(e).

We therefore conclude that claimant quit work without good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-26940 is set aside, as outlined above.

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

DATE of Service: December 11, 2014

¹ Hearing Decision 14-UI-26940 at 3.

² Transcript at 11.

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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