

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1739

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 84518). Claimant filed a timely request for hearing. On October 24, 2014, ALJ L. Lee conducted a hearing, and on October 27, 2014 issued Hearing Decision 14-UI-27631, affirming the Department's decision. On November 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with his application for review. However, claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Sinclair Broadcast Group/KATU employed claimant as a weekend morning news producer from August 27, 2012 to August 26, 2014.

(2) Claimant worked for the employer pursuant to a written service agreement that expired on August 26, 2014. As a weekend morning news producer, claimant worked four 10-hour graveyard shifts per week. In November 2013, the employer laid off the writer who assisted claimant, and hired a new weekend morning news anchor. Claimant did not like working graveyard shifts, found working as a producer without a writer to assist him stressful, and did not like working with the new weekend morning news anchor.

(3) On July 31, 2014, claimant's supervisor told claimant the employer wanted to renew his service agreement, and have claimant continue working for the employer as a weekend morning news producer for an additional period of time. Claimant told his supervisor that he did not want to continue working for the employer as a producer, did not like working graveyard shifts, and was uncomfortable working with the weekend morning news anchor. Claimant's supervisor told him that a weekend evening news

producer position was available, which did not require working graveyard shifts or with the weekend morning news anchor. Claimant's supervisor intended to offer claimant the position if he was interested. If he was not interested, she intended to offer him a position as a writer, which also did not require working graveyard shifts or with the weekend morning news anchor. However, claimant expressed no interest in the evening news producer position, and told his supervisor that he was leaving work when his service agreement expired on August 26, 2014.

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

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 separation is a discharge. 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).¹ In this case, it is undisputed that claimant could have continued to work for the employer as a weekend morning news producer after August 26, 2014 if he had accepted the employer's offer to renew his service agreement, but was unwilling to do so. The record also shows that claimant could have continued to work for the employer if he had told his supervisor on July 31, 2014 that he was interested in the weekend evening news producer position, or interested in a writer position. Because claimant could have continued to work for the employer for an additional period of time, the work separation is a quit.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the 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). 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) (August 3, 2011). Otherwise, "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). 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.

At hearing, the parties disagreed as to whether claimant's supervisor told him a writer position was available if he was not interested in the weekend evening news producer position. Transcript at 45, 66. The parties also disagreed as to whether the weekend evening news producer position was a full or part-time position. Transcript at 54, 65. However, it is undisputed that as a weekend evening news producer, claimant would have worked at least 29 hours per week, and would not have worked graveyard shifts or with the weekend morning news anchor. Transcript at 45-46, 65-66. Claimant did not assert or show that continuing work part-time would have substantially interfered with his return to full time work, or that the cost of working part-time would have exceeded the amount of remuneration he would have

¹ "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (August 3, 2011).

received. Transcript at 53. Nor did claimant assert or show that he could not have continued to work as a producer if he did not work graveyard shifts or with the weekend morning news anchor. Transcript at 24. Thus, given that claimant's supervisor told him the weekend evening news producer was available, and intended to offer it to him if he expressed interest in the position, we cannot find that claimant had no reasonable alternative but to quit work.

Claimant quit work without good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-27631 is affirmed.

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

DATE of Service: December 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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