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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1787

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 14, 2014 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122604). Claimant filed a timely request for hearing. On November 13, 2014, ALJ Vincent conducted a hearing, and on November 14, 2014 issued Hearing Decision 14-UI-28734, affirming the Department's decision. On November 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Aramark Refreshments employed claimant as a route sales representative from August 18, 2014 until September 18, 2014. Claimant's job required him to sell the employer's merchandise to customers.

(2) Before claimant was hired, he did a ride-along of a sales route with the sales manager. The manager told claimant that, if hired, he would be assigned to that route, which was a coffee route. Claimant liked the route and accepted the job with the employer. When hired, the employer agreed to pay claimant $850 per week for his first 90 days. Claimant was told that he would earn approximately $45,000 per year at the job for which he was hired. Claimant did not have an employment contract with the employer that guaranteed him a particular route or job duties.

(3) On approximately August 20, 2014, two days after claimant began working, the sales manager told claimant that he was going to be assigned to a vending route, and not the coffee route. Claimant did not want the vending route and thought that it would require him to work approximately 60 or 65 hours per week when he preferred to work 40 to 45 hours per week. When claimant told the sales manager that he did not want to work the vending route, the sales manager told him the operations manager had made the decision about claimant's assignment. The operations manager had assigned claimant to the vending route because he thought it was a better route on which to train claimant in the requirements of his new position.

(4) When claimant was hired, he understood he was going to be working out of the employer's location in Milwaukie, Oregon. Claimant lived in Beaverton, Oregon. Sometime after his hire, claimant learned that the employer intended to close its Milwaukie location and to relocate its facility to northeast Portland, Oregon, off Interstate 84 on NE Airport Way. The employer's new facility was located approximately 12.81 miles from its Milwaukie facility and between approximately 25 and 45 miles from claimant's residence in Beaverton. Audio at ~ 12:11, 12:40. Claimant thought that, after the employer's facility was moved from Milwaukie to NE Airport Way, his daily commute was going to increase from 30 minutes to one hour. Audio at ~9:30. Claimant commuted in a Honda Ridgeline sports utility vehicle, which consumed gasoline at the rate of 18 to 20 miles per gallon.

(5) On September 17, 2014, claimant was in the employer's facility when the sales manager came up to him and made a comment about starting to drive the vending route on his own. The manager said, "You know you're taking over the route on Monday, so don't fuck up." Audio at ~20:14. Claimant responded that he did not plan on having any problems. The manager then commented, "Well, I know you will fuck up. So, if you do, don't fucking call me." Audio at 20:14.

(6) On September 18, 2014, claimant told the sales manager than he was quitting work immediately. Claimant voluntarily left work on September 18, 2014.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

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 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 his employer for an additional period of time.

Claimant testified that he quit work because the employer did not assign him to the coffee route as he understood it was going to and also because of the length and cost of his commute after the employer relocated its facility from Milwaukie to NE Airport Way and the manner in which his manager spoke to him on September 17, 2014. Audio at ~6:13, ~7:11, ~20:14. With respect to claimant not receiving the route that he thought the sales manager had promised, claimant did not show that this circumstance was objectively grave. Although claimant was disappointed, he did not show that any significant personal or professional harms resulted to him from the change in assignment, and he was going to receive the same rate of pay regardless of the change Moreover, the employer's operations manager provided a legitimate training reason for the change in claimant's assignment, and it did not appear that the change was motivated by anything other than a neutral business judgment. Audio at ~ 30:56. To the extent that claimant relied on his subjective understanding of what he assignment was going to be to establish the gravity of his circumstances, that reliance was unreasonable in light of claimant's lack of an employment contract clearly specifying an assignment to which he was entitled.

With respect to the length and cost of claimant's commute after the employer's facility was moved, there was a discrepancy in the testimony of the parties about the distance between claimant's home and the old facility and the relocated one, and the length of time the relocation would realistically add to claimant's commute. Audio at ~9:30, ~12:40, ~14:06, ~32:23. Although claimant first estimated that his commute to the relocated facility would take one hour and twenty minutes, he ultimately admitted that he had not driven it to determine the commuting time and conceded that he had not taken into account that his morning commute would be during very light traffic at between 4:00 a.m. and 5:00 a.m. Audio at ~7:11, ~8:36, ~9:02. In later testimony, claimant estimated that his commute would take approximately one hour and the employer's witness estimated that, based on his driving experience, the commute from the new facility to Beaverton would likely take 45 minutes to one hour depending on the traffic. Audio at ~9:30, ~34:02. Accepting claimant's later testimony as his most accurate estimate and comparing it to that of the employer's witness, we conclude that the most reasonable inference on these facts is that claimant's commute from his home to the new facility would, at most, reasonably require approximately one hour. Audio at ~9:30. An addition of 30 minutes to claimant's existing commute is not, objectively viewed, a grave circumstance to leave work. Audio at ~9:30. To calculate the cost of claimant's commute, we also accept the range of estimates provided at hearing that the distance from claimant's home to the new facility was between 25 and 45 miles. Audio at ~ 12:40, 13:52, ~14:26. Given claimant's estimate about the gas mileage of his vehicle (an average of 19 miles per gallon) and the cost of gasoline when he decided to leave work ($3.30 per gallon), the cost of claimant's round trip commute would be between $43 and $78 per week. Audio at ~14:38, ~15:31 Because claimant was earning, apparently before taxes, the sum of $850 per week, claimant did not show that, viewed objectively, the costs of his commute or that the net income available to him after he incurred the costs of commuting was a grave reason to leave work. Audio at ~30:56.

With respect to the language that claimant's manager used on September 17, 2014, it did not appear from claimant's testimony that he was particularly offended by it.. Audio at ~ 20:14. Notably, claimant did not contend that his manager habitually used foul language, made statements that he considered abusive, or subjected him to personal invective, insults or slurs. Viewed objectively, these isolated statements that claimant alleged that his manager made on one occasion would not have been viewed by a reasonable and prudent person as grave reasons to quit work.

Claimant did not demonstrate good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-28734 is affirmed.

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

DATE of Service: <u>December 31, 2014</u>

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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