

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1828

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122723). Claimant filed a timely request for hearing. On November 13, 2014, ALJ R. Davis conducted a hearing, and on November 19, 2014 issued Hearing Decision 14-UI-28990, affirming the Department's decision. On November 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Harbor Rail Services employed claimant from February 20, 2012 to September 19, 2014 as a truck salesperson.

(2) From June 2014 to September 10, 2014, claimant received several verbal warnings for attendance violations. On September 10, 2014, the employer's manager gave claimant a written warning stating further attendance violations could result in discharge.

(3) Claimant violated the employer's attendance policy again on September 16, 17 and 18, 2014. On September 19, claimant's manager interviewed claimant about his recent attendance violations, using a script prepared by human resources. After completing the questions, claimant's manager read a statement from the script stating, "We are suspending you. We will contact you as soon as the review is complete." Transcript at 16. The manager gave claimant his paycheck for September 1 through 15, 2014 and told him not to cash it until payday on September 22, 2014. The manager then asked claimant for his company fuel card, keys and telephone, and told claimant he needed to leave. The manager did not tell claimant he was discharged. Claimant asked for permission to empty his desk, and left work after doing so.

(4) On or about September 23, 2014, the employer decided to put claimant on a performance improvement plan (PIP). At 8:30 a.m. on September 24, 2014, the manager called claimant and left a voicemail message on his personal cell phone stating that the company had reviewed claimant's situation and expected claimant to return to work immediately. The manager left the same voicemail

message for claimant again at 11:30 a.m. Claimant was not having telephone problems on September 24, 2014.

(5) Claimant did not respond to the employer's messages. The employer mailed claimant his final paycheck on September 25, 2014.

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

Work Separation. The parties disagreed as to the nature of claimant's work separation, with the employer asserting claimant quit and claimant asserting he was discharged. OAR 471-030-0038(2)(a) (August 3, 2011) provides that 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. 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant testified that it "seemed like" he was discharged because his manager did not tell him he was suspended on September 19, and he did not receive any telephone messages directing him to return to work. Transcript at 24, 25. However, the preponderance of evidence shows the manager did tell claimant he was suspended and that he was directed to return to work on September 24. The employer read a scripted statement to claimant on September 19 stating that the employer was suspending claimant, pending the employer's review. Claimant agreed the manager read from a script, and the employer's inventory control manager, who was also present on September 19, testified that the manager told claimant he was suspended. Transcript at 37. Moreover, the employer did not state claimant was discharged. Claimant's manager and another employer witness who was present when the manager called claimant on September 24 testified that the manager left claimant two messages on September 24 telling claimant to return to work immediately. Transcript at 39 to 40. Claimant was not having telephone problems at the time. The preponderance of the evidence shows claimant could have continued to work for an additional period of time, and his failure to return the manager's calls shows he was unwilling to do so. Thus, the work separation was a voluntary leaving.

Voluntary 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). "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.

We infer that claimant quit because he mistakenly assumed the employer discharged him, or because he was dissatisfied that the employer suspended him from work for attendance issues. Claimant's manager told claimant on September 19 that he was suspended until the employer reviewed his employment. Even if claimant misunderstood his manager, the preponderance of evidence shows the employer called

claimant on September 24 and offered him continuing work. Rather than assuming he had been discharged, claimant had the reasonable alternative of calling the employer to clarify that he was willing to continue working. To the extent claimant quit work because he was dissatisfied that the employer disciplined him for attendance violations, the employer had a right to expect employees to follow its reasonable attendance requirements. We do not find the employer's disciplinary process so onerous that no reasonable and prudent person would have continued to work for his employer for an additional period of time. Rather than quitting his job, claimant had the reasonable alternative of continuing to work under the PIP.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-28990 is affirmed.

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

DATE of Service: January 13, 2015

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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