

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1906

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On October 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80011). Claimant filed a timely request for hearing. On November 21, 2014, ALJ S. Lee conducted a hearing, and on November 26, 2014 issued Hearing Decision 14-UI-29435, affirming the Department's decision. On December 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Despite having testified at hearing that she voluntarily left work because the employer did not intend to compensate her fairly for the hours she was expected to work in a reorganized and modified position, claimant submitted a written argument that presented detailed, new information about the employer's past efforts at staff reorganization, past consolidations or eliminations of various positions and past releases or discharges other employees. Claimant did not explain why she did not offer this information during the hearing, or otherwise show that doing so was beyond her reasonable control as required by OAR 471-041-0090(2) (October 29, 2006). Nor did claimant explain in her argument or during the hearing how this new information was relevant to her decision to leave work or how the changes that she described were grave reasons that caused her to leave work. For these reasons, EAB did not consider claimant's new information when reaching this decision.

FINDINGS OF FACT: (1) News Review Publications employed claimant in various capacities from February 22, 1979 until September 17, 2014. Claimant was employed during the last two and one-half years of her employment in a position that combined the duties of retail advertising manager, special sections manager and special events manager. In this position, claimant earned \$78,898 per year, including bonuses, and worked approximately 60 hours per week.

(2) By 2014, the employer determined that it needed to develop new revenue streams to offset its declining revenues from print advertising. The employer decided to change its business focus to special events and special sections and to reorganize the duties of its staff accordingly.

(3) Sometime before August 28, 2014, the advertising director told claimant that the employer wanted to reorganize the department in which she was working and to change the duties of her position. The advertising director stated that claimant's existing duties as retail advertising manager were going to be assigned to him and other employees to allow claimant to focus her work efforts only on special events and special sections. The advertising director told claimant that in her reorganized position, he thought that her hours would be "more manageable" and that she would need to work only forty to forty-five hours per week as opposed to the sixty hours she had been working. Transcript at 6. He told claimant that the compensation she would receive in the new position would be less than she was currently receiving because the new position had fewer responsibilities. After the advertising director told her about the reorganization, claimant asked him to send her a copy of the job description and compensation plan for the new position.

(4) Sometime before August 28, 2014, the advertising director sent to claimant the job description and the compensation plan she had requested. Claimant saw that in the new position she would earn \$48,000 in base salary per year, with a possible bonus of up to \$12,000, for a total compensation of up to \$60,000 per year as compared to the \$78,898 she currently earned if she received bonuses. Most of the employer's revenue generating positions had a base salary component as well as a bonus component to provide an employee incentive. When claimant reviewed the bonus structure for the new position, she concluded that it was "way too aggressive" and she could not achieve the sales that were required for her to receive the bonus unless she continued to work sixty hours per week rather than the forty to forty-five hours that the advertising director had estimated the new position. Transcript at 8.

(5) Sometime before August 28, 2014, claimant sent a counter-proposal to the advertising director in response to the compensation plan that he had sent to her for the new position. Claimant's counter-proposal was that she would earn a base salary of \$54,000 per year in the new position with a possible bonus of \$6,000 if she met the sales objectives detailed in the employer's initial compensation plan. Claimant thought that the counterproposal was fair because the total compensation available for the new position would remain at \$60,000, and it only reallocated \$6,000 from the bonus component to the base salary component of \$48,000. Claimant also told the advertising director in the email that accompanied the counterproposal that she thought the counterproposal was fair given that she had worked for the employer for over thirty-five years and what she had accomplished during those years. The advertising director replied to claimant's email by asking her to meet with him and the publisher to discuss her counter-proposal on August 28, 2014.

(6) On August 28, 2014, claimant met with the advertising director and the publisher. The publisher told claimant that the employer thought its original compensation proposal was fair and that the fairness of it was measured not by what claimant had accomplished in the past, but by the requirements of the new position. The publisher told claimant that he "could hire somebody off the street for this particular [new] position at \$3,000 to \$4,000 less per year than what they were going to pay [claimant]." Transcript at 9. Claimant thought that the publisher was not going to "budge" on the employer's originally offered compensation plan for the new position. Transcript at 17.

(7) After meeting with advertising director and the publisher, claimant decided that that she could not work in the new position for less compensation than outlined in her counter-proposal. On August 29, 2014, claimant notified the employer that she was resigning effective September 8, 2014 because the employer refused to accept her counter-offer or to negotiate a more generous compensation package

than it originally had offered. After claimant submitted her resignation, the employer asked claimant to stay longer and claimant and the employer ultimately agreed to a separation date of September 17, 2014.

(8) On September 17, 2014, claimant voluntarily left work.

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

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). If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced pay is ten percent or more below the average rate of pay in the individual's labor market, except that this standard applies only when the employer reduces the rate of pay for the position the individual holds and it does not apply when the individual's pay is reduced as a result of transfer, demotion or reassignment to different position. OAR 471-030-0038(5)(d)(A). The standard for showing good cause 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 her employer for an additional period of time.

The employer reduced claimant's compensation due to a business reorganization and a restructuring of her job duties. Because this reduction accompanied a substantial change in claimant's job duties, it was not a reduction in pay for the position that claimant held. Accordingly, the standard of OAR 471-030-0038(5)(d) does not apply to claimant's decision to leave work rather than accept the compensation that the employer provided for the new, restructured position. However, the general good cause provision of OAR 471-030-0038(4) remains applicable to claimant's decision to leave work.

Claimant left work because she did not think that the employer's proposed compensation for the new position, as restructured, was "fair." Transcript at 9, 10, 17. Claimant did not dispute the accuracy of the publisher's statement that he could hire a person "off the street" to take over the new position at three to four thousand dollars less per year than the employer had offered to compensate claimant in that position. Transcript at 9, 18. Although claimant did object that the employer's offered compensation did not acknowledge the years of service she had provided to the employer or her historic value to the employer's business, she neither asserted nor presented evidence showing that the level of the proposed compensation would result in grave harms to her, whether economic, emotional, physical or otherwise. While claimant's view that she was entitled to receive more compensation for the new position than the employer had offered was understandable, absent additional specific evidence, she did not meet her burden to demonstrate that the offered compensation was objectively good cause for her to quit work.

Claimant did not establish that the level of compensation for the new position was a grave reason to leave work and that it was good cause for her to do so when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-29435 is affirmed.

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

DATE of Service: February 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.