

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1914

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151956). Claimant filed a timely request for hearing. On November 20, 2014, ALJ Frank conducted a hearing, and on November 28, 2014 issued Hearing Decision 14-UI-29560, affirming the Department's decision. On December 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Three Rivers Casino & Hotel employed claimant as a slot technician from November 1, 2007 until September 1, 2014.

(2) In September or October 2013, claimant told his manager that his wife had moved to Oklahoma to care for her elderly mother. Claimant told the manager that he had already purchased a house in Oklahoma and that he intended to leave work and to move to Oklahoma to join his wife when he sold his house in Oregon. Claimant did not give his manager a specific date or time-frame by which he anticipated leaving. Around this time and afterward, claimant also told several coworkers that he was going to leave work to relocate to Oklahoma soon.

(3) Sometime in October 2013, claimant's manager prepared the 2014 budget for the department in which claimant worked. Because the manager thought claimant would soon be leaving work, he included a labor-cost line item in that budget for claimant's position only until March 2014. Claimant was aware that no budgetary amount was specifically allocated for his position beginning sometime in 2014. After March 2014, the employer continued to pay claimant and claimant's manager accounted for

claimant's pay as a labor cost overrun. Sometime later, claimant's manager learned that claimant had moved his personal possessions out of his Oregon house and shipped them to his house in Oklahoma.

(4) By June 2014, approximately eight or nine months after claimant had first spoken to him about his plans to move to Oklahoma, claimant's manager wanted more specific information from claimant about when he planned to leave work. On June 19, 2014, claimant's manager met with claimant to discuss his plans. The manager mentioned that several months had elapsed since claimant first stated his intention to move to Oklahoma and he asked claimant if he could give him a specific date when he was going to leave work. Claimant responded, "How about September?" and the manager replied, "Okay, September 1<sup>st</sup> [2014]? Audio at ~20:55. Claimant agreed to the September 1, 2014 date. Audio at ~20:58, ~22:54. During their conversation, the manager never told claimant that he was going to be laid off, that his position was going to be eliminated or that he was discharged. Audio at ~21:20, ~25:22. At the conclusion of their conversation, the manager asked claimant to give to him a letter expressing their agreement that claimant would leave work as of September 1, 2014.

(5) On approximately June 20, 2014, claimant told his manager that he had reconsidered when he wanted to leave work. Claimant told the manager that, instead of leaving on September 1, 2014, he wanted to work until September 30, 2014. Audio at ~27:35. The manager told claimant that he had already informed his own supervisor that September 1, 2014 was going to be claimant's final day and he was not changing that date. Audio at ~27:44.

(6) On approximately June 24, 2014, claimant gave his manager the letter that the manager had requested about their June 19, 2014 agreement. The letter was dated June 19, 2014 and stated that, as the manager had asked, it was intended to summarize their June 19, 2014 conversation. It further stated, "As you explained, [the employer] has not budgeted for my position beginning on September 1, 2014, and therefore, due to a reduction in force, my last day of employment will be August 31, 2014. Thank you for providing me such a generous notice so I will have time to arrange for my unemployment benefits while trying to secure another position." Audio at ~11:33. At that time, the manager reviewed the letter. The manager told claimant that the letter was not accurate, that claimant had agreed to leave work and that claimant had not been discharged or laid off and his position had not been eliminated. Audio at ~16:27, ~26:59. Claimant insisted to the manager that he had been laid off or discharged. Audio at ~16:27, ~26:56.

(7) August 29, 2014 was claimant's final scheduled work day before September 1, 2014. After that day, claimant left the workplace and did not return. Claimant voluntarily left work on September 1, 2014.

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

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b). If an employer and a claimant mutually agree on the date the employment will terminate, the work separation is characterized as a voluntarily leaving and not a discharge. *Employment Department v. Shurin*, 154 Or App 352, 959 P2d 637 (1998).

Claimant's manager contended that he and claimant mutually agreed during their June 19, 2014 conversation that claimant was leaving work as of September 1, 2014. Audio at ~20:33, ~21:38, ~22:54. Claimant took the position that in that conversation his manager involuntarily "terminated" his employment effective September 1, 2014. Audio at ~8:40, ~9:06. Claimant's testimony did not appear completely forthcoming. For example, he initially denied he had ever mentioned to his manager that he was going to "retire" and did not know why the employer might have provided this information to the Department when it was investigating his unemployment claim. Audio at ~9:56, ~13:41, ~14:21, ~14:42. Notably, he did not volunteer that he had mentioned several times in the workplace after September or October 2013 that he intended to leave work soon to move to Oklahoma, and he finally alluded to those statements only in response to pointed questions from his own attorney. Audio at ~15:04. In addition, it is simply not plausible that the claimant's manager would abruptly tell him on June 19, 2014, eight or nine months after he first told the manager that he intended to leave work to relocate to Oklahoma, that he was discharged or laid off as of a date more than two months in the future without at least first inquiring whether they could reach an agreement on claimant's last day. It is significant, as well, that claimant did not dispute the manager's testimony that, even though claimant's position was not budgeted for after March 2014, that did not mean that claimant was discharged or that his position had been eliminated because his pay was accounted for as a labor cost overrun and, absent claimant's agreement to leave, there was no reason to expect that this accounting arrangement would not have continued. Audio at ~22:18, ~22:54, ~23:08, ~24:26. Finally, although claimant agreed that he prepared the June 19, 2014 letter at his manager's request to summarize the June 19, 2014 meeting, it is highly unlikely that claimant's manager would ask claimant to prepare a letter memorializing his own future discharge, as claimant contended at hearing. Audio at ~12:44, ~13:13. It is far more likely that the manager asked claimant when he intended to leave, that claimant and the manager settled on a date and, given claimant's delay in acting on his stated intention to leave, the manager wanted some concrete, written evidence of claimant's agreement. Because the undisputed evidence, and the logical inferences drawn from it, most strongly supports the manager's account of the June 19, 2014 conversation, it is the more reliable and we accept it in preference to claimant's account. The preponderance of the evidence shows that during the June 19, 2014 meeting with his manager, claimant agreed to leave work as of September 1, 2014.

Claimant's written argument emphasizes that claimant's manager and not claimant initially proposed September 1, 2014 as the date on which claimant would leave work as if this somehow negates claimant's agreement to that separation date. Claimant's Written Argument at 2, 3. Although we have found otherwise, even if the manager did first propose the date, by not disagreeing to that date during the June 19, 2014 conversation, claimant's agreement to it can be inferred and the nature of the work separation was not thereby changed from a voluntary leaving to a discharge. *See J. R. Simplot Company v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (work separation was a voluntary quit when agreement to separation could be inferred by claimant not expressing disagreement with the separation date proposed by the employer and not insisting at that time that he was unwilling to leave work). Claimant's written argument also appears to assert that claimant's attempt to change the effective date of his work separation from September 1, 2014 a few days after he agreed to that date on June 19, 2014 establishes that no mutual agreement was reached on June 19, 2014 the date of claimant's final day. Claimant's Written Argument at 3. However, despite claimant's later attempt to rescind his resignation, or to change its effective date, the separation remained an agreed upon voluntary leaving even though the employer elected not to allow a later rescission or modification. *See Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999) (attempted rescission of resignation, which

employer does not allow, remains a voluntary leaving and does not, by the employer's refusal, become a discharge). Because claimant initially expressed agreement to the separation date of September 1, 2014, the employer's refusal to later accept claimant's unilateral decision to change that date did not transform the nature of claimant's work separation to a discharge. The preponderance of the evidence shows, more likely than not, that claimant agreed to voluntarily leave work as of September 1, 2014.

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.

Throughout the hearing and in his written argument, claimant denied that he quit work and did not offer any evidence that grave reasons motivated him to leave work. Claimant did not meet his burden to show that he had good cause for leaving work when he did or that a reasonable and prudent person exercising ordinary common sense would have done so under similar circumstances.

Claimant did not show establish good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-29560 is affirmed.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, 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.

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