

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1932

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On August 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 131827). Claimant filed a timely request for hearing. On September 8, 2014, the Office of Administrative Hearings (OAH) mailed claimant notice of a hearing scheduled for September 22, 2014. On September 22, 2014, ALJ Holmes-Swanson conducted a hearing at which the employer failed to appear, and on September 24, 2014 issued Hearing Decision 14-UIB-25824, concluding the employer discharged claimant, not for misconduct. On September 25, 2014, OAH cancelled and vacated Hearing Decision 14-UIB-25824 due its failure to mail notice of the September 22, 2014 hearing to the employer, and scheduled a hearing on for October 13, 2014. On October 14, 2014, ALJ Seideman issued Hearing Decision 14-UI-26865, dismissing claimant's request for hearing for failure to appear at the October 13, 2014 hearing. On October 30, 2014, claimant filed a request to reopen the hearing. On November 26, 2014, ALJ R. Davis conducted a hearing, and on December 2, 2014 issued Hearing Decision 14-UI-29714, allowing claimant's request to reopen, and concluding that claimant quit work without good cause. On December 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party applied for review of that portion of Hearing Decision 14-UI-29714 allowing claimant's request to reopen the October 13, 2014 hearing. EAB therefore limited its review to whether claimant is disqualified from receiving benefits based on his work separation from the employer.

FINDINGS OF FACT: (1) Pacific Coast Painting employed claimant as a painter from July 3 to 11, 2014.

(2) At approximately 5:30 p.m. on Thursday, July 10, 2014, the employer's owner telephoned claimant and complained that claimant failed to follow the owner's instructions when painting a house that day. When claimant disagreed, the owner became angry and ended the call. At approximately 8:00 p.m., claimant telephoned the owner and asked if was going to be paid the next day. The owner replied that

claimant would be paid on the employer's next regular payday, Monday, July 14, 2014. Claimant told the owner he needed money, and to bring his checkbook to the job site the following morning. The owner agreed to meet claimant at the job site the following morning.

(3) On July 11, 2014, claimant met with the owner, who gave claimant his paycheck. Claimant could have continued to work for the employer if he told the owner he was interested in doing so. However, claimant mistakenly assumed he was discharged, told the owner he was sorry it did not work out, left work, and did not return to work or contact the employer after July 11.

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

OAR 471-030-0038(2)(b) (August 3, 2011) states 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). 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.

In this case, claimant could have continued to work for the employer for an additional period of time after July 11, 2014 if he told the employer's owner that he was interested in doing so. However, claimant instead told the owner he was "sorry it did not work out," left work, and did not return to work or contact the employer after July 11. Because claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving, and not a discharge.

Claimant voluntarily left work because he mistakenly assumed he was discharged. However, the employer's owner did not tell claimant he was discharged, or that the paycheck claimant had requested was his final paycheck. Instead of assuming he was discharged, claimant could have clarified his employment status with the owner. Claimant failed to show that no reasonable and prudent person in his situation would have done so. Absent such a showing, claimant failed to establish that he quit work with good cause. Claimant therefore is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-29714 is affirmed.

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

DATE of Service: February 5, 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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