

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0007

*Affirmed*  
*Disqualification*  
*Eligible for Weeks 43-14 and 44-14*

**PROCEDURAL HISTORY:** On November 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 104045). Claimant filed a timely request for hearing. On December 29, 2014, ALJ Triana conducted a hearing, and on December 31, 2014 issued Hearing Decision 14-UI-31127, concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause. On January 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

**FINDINGS OF FACT:** (1) Tyco Electronics Corporation employed claimant as a technical project manager from March 17 to October 21, 2014.

(2) In a meeting claimant led during the last week of September of 2014, his supervisor berated claimant and other employees and used foul language. Claimant did not report his supervisor's actions to the employer.

(3) On October 1, 2014, claimant's supervisor gave him his annual performance review. The written review stated that claimant was meeting the employer's expectations. At the end of their meeting, however, claimant's supervisor told claimant he was not meeting the supervisor's expectations, and that he would follow up with a separate assessment on what claimant needed to do to meet those expectations.

(4) On October 17, 2014, claimant's supervisor scheduled a meeting with claimant for October 21, 2014 to discuss placing claimant on a performance improvement plan (PIP). On October 20, 2014, claimant's supervisor provided him a copy of the PIP, which gave claimant 30 days to meet his supervisor's

expectations about how he led meetings and the manner in which he held others accountable. Claimant responded by declining to meet with his supervisor on October 21, 2014.

(5) On October 20, 2014, claimant emailed his supervisor's supervisor and the employer's human resources manager, asserting that the PIP was "unfair and uncalled for" given that his annual performance review stated he was meeting the employer's expectations. Exhibit 1. Claimant also reported his supervisor's behavior during the late September 2014 meeting, stating that the employer's human resources department could investigate the matter further. Claimant asserted that he found his supervisor's behavior unacceptable, and that he was not a good fit with his supervisor's management style. Claimant asked that he not be placed on a PIP, and that he be transferred so that he no longer worked under his supervisor. Claimant concluded by stating that if the employer disagreed with his requests, "consider this my two week notice." Exhibit 1.

(6) On October 21, 2014, claimant met with the employer's human resources manager, who instructed claimant to sign the PIP. Claimant stated that he was unwilling to do so. The human resources manager asked if claimant was resigning. Claimant notified her that he was resigning, effective November 4, 2014. The human resources manager stated that when employees gave notice, they were not asked to work through their notice period, and that claimant could leave at that time. Claimant was asked to gather his personal belongings, and leave the employer's belongings behind.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause.

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) (August 3, 2011). 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). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

An individual is disqualified from receiving benefits if he has been discharged for misconduct, or voluntarily left work without good cause. ORS 657.176(2). OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. "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). 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.

For purposes of ORS 657.176(2), however, when an individual has notified an employer that he will leave work on a specific date for reasons that do not constitute good cause, and the employer discharged the individual, not for misconduct, within 15 days prior to the date of the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. ORS 657.176(8). However, the individual shall be eligible for benefits

for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. *Id.*

In the present case, the employer discharged claimant on October 21, 2014 because he notified the employer he was quitting work, effective, November 4, 2014, and not because claimant violated the standards of behavior which an employer has the right to expect of an employee, or disregarded the employer's interest. Claimant therefore notified the employer that he was quitting work a specific date, and the employer discharged him, not for misconduct, within 15 days prior to the date of the planned quit. The remaining issue under ORS 657.176(8) is whether claimant's planned quit was for reasons that do not constitute good cause. Claimant had the burden to establish good cause by a preponderance of evidence. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Claimant planned to quit work because he was unwilling to agree to a PIP, in which the employer gave him 30 days to meet his supervisor's expectations about how he led meetings and the manner in which he held others accountable. At hearing, claimant asserted that his supervisor was using the PIP as a "tool for ongoing harassment and creating a hostile work place." Exhibit 1. However, we agree with the ALJ's determination that claimant's supervisor had the right and responsibility to counsel and discipline claimant if he felt claimant was not meeting expectations, and that the record fails to show that he initiated the PIP for other reasons, such as to harass claimant or unjustly discipline him.<sup>1</sup> Absent such a showing, claimant failed to establish that no reasonable and prudent person would have agreed to the PIP and continued to work for the employer for an additional period of time. Claimant therefore failed to establish that his planned quit was for reasons that constitute good cause.

Thus, under ORS 657.176(8), claimant's work separation is adjudicated as if his discharge had not occurred, and his planned voluntary leaving had occurred. Claimant therefore is disqualified from receiving benefits, except that he is eligible for benefits for the weeks from October 19 through November 1, 2014 (weeks 43-14 and 44-14), the week in which the actual discharge occurred through the week prior to the week of claimant's voluntary quit.

**DECISION:** Hearing Decision 14-UI-31127 is affirmed.

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

**DATE of Service:** February 20, 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](http://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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<sup>1</sup> Hearing Decision 14-UI-31127 at 4.

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