

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0014

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On December 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102635). Claimant filed a timely request for hearing. On January 5, 2015, ALJ Seideman conducted a hearing, and on January 6, 2015 issued Hearing Decision 15-UI-31335, affirming the Department's decision. On January 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seven Feathers Hotel & Casino Resort employed claimant from February 26, 2001 to October 29, 2014 as a table games supervisor.

(2) Claimant was a full time salaried employee. Prior to October 27, 2014, the employer paid him a salary equivalent to \$18.19 per hour for full time work.

(3) On October 27, 2014, claimant's manager told him the employer had eliminated 23 positions, including claimant's position, due to business conditions. The employer told claimant that to continue working for the employer, he would have to accept a full time job as a hotel front desk clerk for \$11.00 per hour, with benefits including health insurance for claimant and his family, paid time off, and disability and life insurance. The manager told claimant he had until October 29, 2014 to decide if he would continue working for the employer.

(4) On October 29, 2014, claimant declined to accept the new conditions of employment because he anticipated he would earn more from unemployment benefits insurance than from the hotel clerk position, and he was unable to pay all his bills with the income he would earn from the hotel clerk position.

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

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). OAR 471-030-0038(5)(d) (August 3, 2011) provides that 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 rate of pay is ten percent or more below the Department's determination of the median rate of pay for similar work in the individual's normal labor market area. However, OAR 471-030-0038(5)(d) applies only when the employer reduces the rate of pay for the position the individual holds, and not when an employee's earnings are reduced as a result of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). Otherwise, "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.

Claimant quit work rather than continue working as a hotel clerk for reduced pay. In the present case, OAR 471-030-0038(5)(d) does not apply to claimant's work separation because he quit work due to a reduction in the rate of pay as a result of a reassignment from a table games supervisor to a hotel clerk, and not a reduction in his rate of pay for the table games supervisor position. The reduction in claimant's pay was significant. However, by quitting his job, claimant eliminated his earnings entirely, and claimant did not assert or show that the cost of continuing to work for the employer would have exceeded the remuneration he received. Nor did he otherwise show that no reasonable and prudent would have continued to work full time with full benefits as a hotel clerk rather than become unemployed. Absent such showings, claimant failed to establish to establish that he quit work with good cause. Claimant therefore is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-31335 is affirmed.

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

DATE of Service: February 23, 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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