

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0434

Modified
Disqualification Effective Week 52-14

PROCEDURAL HISTORY: On March 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits based on that work separation effective January 25, 2015 (decision # 90843). Claimant filed a timely request for hearing. On April 14, 2015, ALJ W. Lewis conducted a hearing, and on April 15, 2015 issued Hearing Decision 15-UI-36951, concluding that claimant's disqualification was effective January 11, 2015. On April 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) AJ Medical Transportation, Inc. employed claimant as a driver from December 2012 through December 22, 2014.

(2) Claimant was dissatisfied with his working conditions. He made \$9.71 per hour, but was aware that other employees were paid a higher hourly wage and thought he too should be paid more. He was uncomfortable with some of his assignments, such as picking up a wheelchair from a customer's backyard in the rain or being assigned to pick up a customer who was not dressed and not prepared to be picked up when claimant arrived. The owner criticized claimant for complaining about his work or his hourly wage to a customer. The owner reduced claimant's hours, purportedly because he was irritated that claimant had asked for a raise or complained about being paid too little, and assigned claimant's van to a different person. Claimant felt the owner treated him badly and without respect. He did not want to continue working reduced hours for the employer at a low wage under those conditions. However, claimant's cost of working did not exceed his wages, even while working reduced hours.

(3) Claimant last drove for the employer on December 19, 2014. He was not scheduled to work the following week, and anticipated that the owner would schedule him only a few hours a week as a relief driver. The owner did not tell claimant he was fired, or tell claimant that he would not schedule claimant to work any additional hours. On December 21, 2014, the owner had someone collect the van claimant usually drove for work so that another driver could use it. On December 22, 2014, claimant

returned the rest of the employer's property in his possession to the employer's business. He did not return to work thereafter.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause. However, claimant's work separation occurred on December 22, 2014, making the disqualification from benefits effective December 21, 2014.

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 employer did not tell claimant he was fired or would no longer be scheduled to work after any point in time, so there was continuing work available to claimant. Claimant chose not to continue working for the employer and was the moving party in the separation. The separation was, therefore, a voluntary leaving.

Claimant provided conflicting information regarding the date of his work separation. He testified that his last paycheck was dated January 26, 2015 for 59 hours of work during the period ending January 13, 2015, but also testified that he had not worked 59 hours during the period ending January 13, 2015 and could not explain which work days were covered by that paycheck.¹ He initially testified that he last worked on December 29, 2014, but later said he did not work after December 25, 2014.² He testified that he last worked on December 23, 2014, but then stated that he did not work on December 23, 2014, that he had returned all of the employer's property to the employer on December 22, 2014, that he never performed work again after the owner took the van on December 21, 2014, and that he was busy moving his residence on December 20, 2014.³ Following that testimony, he testified that he last worked for the employer on December 19, 2014.⁴ The most consistent and plausible evidence of claimant's last day of work was that it occurred on December 19, 2014. Claimant's act of returning the employer's property to the employer on December 22, 2014 was the first unambiguous act demonstrating claimant's decision not to continue performing work for the employer after that time. Accordingly, we find it more likely than not that the work separation occurred on December 22, 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). An individual who leaves work due to a reduction in hours has left without

¹ Compare Audio recording at ~55:15, ~57:15.

² *Id.* at ~9:00, ~23:00.

³ *Id.* at ~23:00, ~32:30, ~34:00.

⁴ *Id.* at ~34:00.

good cause unless continuing to work substantially interferes with his return to full time work or the cost of working exceeds his remuneration. OAR 471-030-0038(5)(e). The good cause 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.

To the extent claimant's decision to leave work was based on the reduction of hours, he did not have good cause to quit. Claimant did not establish that his cost of working exceeded his remuneration. Nor did he assert or show that working reduced hours would have substantially interfered with his ability to seek or obtain full time work.

Claimant's primary reason for quitting work was that he disliked the way the owner treated him. Claimant described his dissatisfaction with some of the assignments the owner gave him, his rate of pay, the owner's decision not to allow him to keep the employer's van and the owner's adverse responses when, for example, claimant asked for a raise. Had the owner increased claimant's hours, increased his hourly wage and/or not taken the employer's van from his possession, however, it is more likely than not that claimant would not have quit work when he did. While the cumulative effect of claimant's dissatisfaction prompted him to leave work, whether the reasons he provided for doing so are considered individually or as a whole, they did not amount to any circumstance that was so immediately grave that a similarly situated reasonable and prudent person would have no reasonable alternative but to quit work on December 22, 2014.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 15-UI-36951 is modified, as outlined above.

Susan Rossiter and J. S. Cromwell;
D. H. Hettle, *pro tempore*, not participating.

DATE of Service: June 12, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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