

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0453**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94224). Claimant filed a timely request for hearing. On March 23, 2015, ALJ Buckley conducted a hearing, and on March 27, 2015 issued Hearing Decision 15-UI-35876, affirming the Department's decision. On April 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Pat Costello, a financial advisor and broker, employed claimant on January 7, 2015 to perform services as an administrative assistant.

(2) In December 2014, the employer was discharged from the investment firm, Edward Jones, and, as a result, his broker registration was suspended on December 23, 2014. Beginning in January 2015, the employer became an affiliate of another investment firm, Raymond James.

(3) On January 2, 2015, the employer offered claimant work as his executive assistant, and told claimant his financial advisor license had "lapsed," and would be renewed "any day." Audio Record at 6:27-6:46. The employer also informed claimant that she was required to transfer all her investments to the employer, and conduct future investments through him, as a condition of employment.

(4) Claimant reported to work on January 7, 2015. Claimant heard the employer soliciting clients on the telephone. The employer told claimant he had been speaking to one of his "biggest clients" and thought they would become his client, even though it would be a breach of his non-compete contract with Edward Jones. Audio Record at 7:03-7:19.

(5) The employer asked claimant if she preferred to be paid once or twice per month. Claimant responded and offered her documentation to complete the Form I-9 for the employer. The employer told claimant he did not want the documentation because she would be paid by a company called Columbia

Wealth Strategies. Claimant checked online business licensing resources for Washington, and her searches showed that Columbia Wealth Strategies did not have a business license in Washington.

(6) Later on January 7, 2015, the employer's colleague called and left a message referring to the employer's discharge from Edward Jones, and stating that the discharge had been for "unethical reasons." Audio Record at 8:08-8:33. Claimant called the Washington State Division of Securities and was told that the employer's license had not "lapsed," but was suspended and under review. Claimant did not know if or when the employer's license would be renewed.

(7) The afternoon of January 7, 2015, claimant attended a meeting with the employer and a representative of the employer's new business affiliation, Raymond James. At the end of the meeting, the employer asked the representative when Raymond James would start sending him referrals because he was "ready to go," and the representative told the employer it could not send the employer referrals until he was licensed. Audio Record at 10:12-10:32.

(8) After the meeting on January 7, 2015, the employer told claimant he was changing her title from administrative assistant to "client services manager," and expected her to manage his client relationships. Audio Record at 9:50-10:01. Claimant was not licensed to act as a broker.

(9) On January 7, 2015, claimant emailed the employer about her concerns about how his prior employment ended, his refusal to accept her Form I-9 documents, and his license. The employer told claimant he had been discharged from Edward Jones for playing a practical joke at work, and not for ethical reasons. The employer did not address claimant's concerns about the employer's refusal to have claimant complete the Form I-9, his suspended license, or the licensing status of Columbia Wealth Strategies.

(10) Claimant did not return to work after January 7, 2015, because she believed the employer was violating the law when it refused her Form I-9 information and hired her without having a business license, and when the employer appeared to be conducting securities-related business with a suspended license, and engaging in transactions that violated his non-compete agreement. The employer paid claimant for the work she performed on January 7.

(11) Claimant learned after her employment ended that the employer's broker license was renewed on January 17, 2015.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude claimant voluntarily left work with good cause.

An individual shall be disqualified from receipt of unemployment insurance benefits if he or she has a disqualifying separation from "work" under ORS 657.176(2). "Work" is defined as the continuing relationship between an employer and employee, and "'employment' means service for an employer . . . performed for remuneration." OAR 471-030-0038(1)(a); ORS 657.030(1).

As a preliminary matter, we address claimant's argument at hearing that she was not "employed legally" by Pat Costello, and thus there was no work separation, because the employer refused to take claimant's information for the Form I-9. Audio Record at 3:23-4:10. There was no dispute at hearing that claimant

performed services “for” the employer “for remuneration” under ORS 657.030(1). The record therefore shows claimant and the employer had an employment relationship, and that claimant was separated from “work” when she chose not to return after January 7, 2015.

In Hearing Decision 15-UI-35876, the ALJ concluded that claimant left work because she learned that the employer was “experiencing issues” related to his prior employment and setting up his business entities, and she believed the employer was violating a non-compete agreement.<sup>1</sup> The ALJ determined those factors did not create a situation of such gravity that claimant had no reasonable alternative but to quit, concluding that, rather than quitting, claimant had the reasonable alternative of bringing her concerns to the employer, and determining if the employer would address them before she quit.<sup>2</sup>

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

On January 7, 2015, claimant’s first day of work for the employer, she developed serious, reasonable concerns about the legitimacy and legality of the employer’s business and business practices, including persuasive evidence that the employer was not licensed or legally permitted to hire employees, or authorized to act as a broker. When asked at hearing if the business was licensed, the employer responded, “I’m not sure. I don’t know.” Audio Record at 24:44-25:35. Similarly, at hearing, the employer was uncertain when his broker license was reinstated, but testified that it took approximately 30 days after a discharge from work for a license to be reinstated. Audio Record at 26:10-27:03. Claimant believed it was reinstated on January 17, 2015. In addition to expecting claimant her to engage in potentially unlawful conduct by managing clients’ accounts without a broker’s license,<sup>3</sup> the employer was probably engaged in soliciting clients in violation of an agreement with his prior employer. Claimant confronted the employer about her concerns, but the employer did not address them other than to say he was not discharged for an ethical violation.

Not only was claimant expected to work for the employer under conditions that put her at risk of violating the Securities Exchange Act and required her to provide support for an unlicensed securities broker, claimant was also required, as a condition of employment, to transfer all of her own investments to the employer’s company and conduct all of her future investments through the employer, putting her own investments and financial wellbeing at risk. Whether considered individually or collectively, those

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<sup>1</sup> Hearing Decision 15-UI-35876 at 3.

<sup>2</sup> *Id.*

<sup>3</sup> See Section 15(a)(1) of the Securities Exchange Act of 1934 (“Act”) (it is generally unlawful for any broker to engage in transactions in securities for others unless he or she was registered with the Securities Exchange Commission (SEC)).

conditions created a grave situation for claimant, under which no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue to work for the employer.

Claimant voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 15-UI-35876 is set aside, as outlined above.<sup>4</sup>

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

**DATE of Service: June 16, 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](http://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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<sup>4</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.