

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0457**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140602). Claimant filed a timely request for hearing. On April 15, 2015, ALJ M. Davis conducted a hearing, and on April 16, 2015 issued Hearing Decision 15-UI-36991, concluding the employer discharged claimant not for misconduct. On April 20, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Seven Feathers Hotel & Casino Resort employed claimant from June 7, 1995 to February 2, 2015 as a slot supervisor.

(2) As a slot supervisor, claimant worked full time, earned more than \$23 per hour, and received benefits.

(3) On February 2, 2015, claimant's director told her the employer had eliminated a number of positions, including claimant's position, because it restructured several of its programs. The employer told claimant that to continue working for the employer, she would have to accept a part time job as a bingo paymaster for \$11.55 per hour, with no benefits.

(4) On February 2, 2015, claimant declined to accept the new conditions of employment because she was insulted that the employer reassigned her to a part time position that paid half her prior wage, with no benefits, after almost 20 years of employment.

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

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). OAR 471-030-0038(5)(d) 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, or by a loss or reduction of fringe benefits. OAR 471-030-0038(5)(d)(A), (C). OAR 471-030-0038(5)(e) provides that, if an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. 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.

In Hearing Decision 15-UI-36991, the ALJ found that the employer eliminated claimant’s slot supervisor position, but made no finding about the bingo paymaster position the employer offered simultaneously to claimant.<sup>1</sup> The ALJ concluded that the employer discharged claimant, not for misconduct, because the employer eliminated claimant’s position as a slot supervisor for reasons other than claimant’s job performance, and did not have continuing employment available for her.<sup>2</sup>

We disagree with the ALJ’s conclusion that the employer discharged claimant. The employer was willing to allow claimant to continue working as a bingo paymaster, and claimant refused to do so. The employer did not prevent claimant from continuing to work for an additional period of time. Because claimant could have continued to work for the employer if she had accepted the bingo paymaster position, the work separation is a quit.

Claimant quit work because she was insulted by the employer’s offer to reassign her to the bingo paymaster position after claimant had worked for the employer for nearly twenty years, and the bingo paymaster position paid half her prior wage, was part time, and had no benefits. In the present case, OAR 471-030-0038(5)(d) does not apply to claimant’s work separation because she quit work, in part, due to a reduction in the rate of pay and the loss of fringe benefits as a result of a reassignment from a slot supervisor to a bingo paymaster, and not a reduction in her rate of pay for the slot supervisor position. Moreover, absent a showing that continuing to work interfered with claimant’s return to full time work or that the cost of working exceeded her earnings, claimant did not establish good cause to quit due to the reduction in her hours pursuant to OAR 471-030-0038(5)(e). Claimant was

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<sup>1</sup> Hearing Decision 15-UI-36991 at 1.

<sup>2</sup> *Id.* at 2-3.

understandably upset by the abrupt reassignment to a position with significantly less favorable terms. However, by quitting her job, claimant eliminated her earnings entirely. Claimant did not show that no reasonable and prudent would have continued to work part time as a bingo paymaster rather than become unemployed. Absent such showings, claimant failed to establish that she quit work with good cause. Claimant is therefore disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-36991 is set aside, as outlined above.

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

**DATE of Service: June 17, 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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