

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0487

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 123225). Claimant filed a timely request for hearing. On April 9, 2015, ALJ Wyatt conducted a hearing, and on April 17, 2015 issued Hearing Decision 15-UI-37071, affirming the administrative decision. On April 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Beaverton Toyota employed claimant from January 12, 2009 to February 20, 2015, last as an auto alert manager.

(2) From sometime in 2012 until October 2014, claimant worked as an inventory manager for the employer. In this position, claimant was guaranteed \$6,000 per month in salary with the possibility of earning more, depending on the employer's profits. In addition, the employer paid a portion of the cost of health insurance premiums for claimant and his family and also paid claimant a gas allowance.

(3) In October 2014, the dealership transferred another employee into the position of inventory manager at the dealership where claimant worked. As a result, claimant was transferred to a position as finance manager. In this position, claimant received the same amount of salary and benefits he had received as inventory manager.

(4) On January 5, 2015, the employer closed its finance department and eliminated the finance manager position. Claimant was offered and accepted a position as auto alert manager. In his new job, the employer expected claimant to contact customers who brought their cars to the employer's dealership for service, and persuade them to trade in their cars and buy new ones. The employer did not provide claimant with a pay plan for his new job for several weeks, however.

(5) The pay plan that was finally offered to claimant for the auto alert manager position provided no base salary; claimant was paid commission only. In addition, the plan paid claimant no gas allowance

and paid no portion of the cost of health insurance premiums for claimant and his family. Claimant believed that he would be unable to earn the same amount in commission in his new job that he had earned in salary in his former job because it would be difficult to convince customers, who came to the dealership with no intention of buying a new car, that they should do so. Claimant spoke to the employer's chief financial officer (CFO) about these difficulties, but was unsuccessful in persuading the CFO that he should be paid a guaranteed monthly salary amount.

(6) For the pay period ending December 31, 2014, during which claimant worked as finance manager, claimant earned \$4,000 in salary. For the pay period ending January 31, 2015, during which claimant worked as auto alert manager, claimant earned \$885 in commission. For the pay period ending February 14, 2015, during which claimant worked as auto alert manager, claimant earned \$1,070 in commission.¹ Exhibit 1; Audio 14:34 to 18:03.

(7) Based on the paychecks he received for the last two weeks of January and first two weeks of February 2015, claimant decided that he could not afford to work as auto alert manager because he would be unable to support his family with his earnings. On February 20, 2015, he quit his job. Claimant could have continued to work in the position of auto alert manager had he not chosen to voluntarily leave work.

CONCLUSION AND REASONS: We agree with the ALJ that claimant voluntarily 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) (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 his employer for an additional period of time.

Claimant voluntarily left his job because the employer reduced his pay and benefits when it demoted him to the position of auto alert manager on January 5, 2015; claimant decided he could not support his family on his reduced earnings. 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 that resulted from a transfer or demotion. Claimant failed to show that the cost of working for the employer exceeded the remuneration he

¹ Claimant's paycheck for the pay period ending February 14, 2015 included an additional \$1,850 in salary which represented back pay owed to him for work he had performed as finance manager. Audio 18:03.

received in his new job. Claimant understandably believed that he was entitled to receive a more generous compensation package, given his years of work for the employer as a manager. Claimant failed to present evidence, however, that the reduced pay and benefits he received as an auto alert manager resulted in grave harm to him. Claimant's concern regarding his ability to support his family is also understandable; quitting his job, however, left him with no income to contribute toward his family's support. For these reasons, we find that claimant failed to demonstrate that no reasonable and prudent person would have continued to work for the employer for an additional period of time for a reduced salary and reduced benefits. We therefore cannot conclude that the employer's decision to demote claimant left him with no reasonable alternative but to quit his job.

Claimant voluntarily left work without good cause and is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-37071 is affirmed.

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

DATE of Service: June 18, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.