

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0546

Affirmed
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 # 124815). Claimant filed a timely request for hearing. On April 15, 2015, ALJ S. Lee conducted an interpreted hearing at which claimant was assisted by a qualified Vietnamese interpreter, and on April 20, 2015, issued Hearing Decision 15-UI-37165, affirming the Department's decision. On May 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) First Student Management LLC employed claimant as a school bus driver from September 2, 2014 to November 24, 2014.

(2) Claimant applied for the job expecting to drive a standard school bus in Tigard, OR. However, he needed several weeks of training to obtain the necessary commercial driver's license (CDL) After he obtained his CDL, he did not have sufficient seniority to be assigned a bus route in Tigard. The employer used claimant to fill in as a driver on other routes as needed and initially assigned him to drive a route in Lake Oswego, Oregon. Claimant had difficulty learning the Lake Oswego route and parents to complain about him not being on schedule. The employer then tried claimant on three different routes in Tigard, but he also had difficulty remembering the routes and stops there, in part due to a medication he took that affected his memory.

(3) The employer next tried claimant on two routes in Tualatin which was uneventful except for a report that while driving a standard bus, claimant bumped a parked vehicle in a school parking lot, causing minor damage. Claimant denied striking the vehicle, but the employer received photos showing property damage and concluded claimant had struck the vehicle.

(4) Following the accident report, the employer assigned claimant to drive a small bus in Lake Oswego believing it would be easier for him due to its smaller size and fewer students and stops. Claimant

became unhappy with the fewer hours he worked on the route and the longer commute to Lake Oswego from his residence which resulted in a reduction in income. He also believed the employer had unfairly treated him based on racial bias in assigning him to many different routes and restricting him from driving a standard bus. Despite that belief, claimant did not complain to the employer's human resources department.

(5) On or about November 24, 2014, claimant told an assistant manager that he was unhappy with his assigned route and work schedule. The manager told him his only option was to drive the Lake Oswego route. On November 24, claimant left work because he concluded the employer treated him unfairly and he was not earning enough income to justify his continued employment.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. 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; 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, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011).

Claimant initially denied that he quit his job with the employer. Transcript at 5. However, claimant later admitted that when he was given the choice of continuing to work as a driver of the Lake Oswego route or not at all, he chose to quit. Transcript at 34, 36. Because claimant could have continued to work for the employer for an additional period of time but was unwilling to do so, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant left work, in part, because he believed he believed the employer treated him unfairly due to his race. However, claimant did not dispute that he often was behind schedule and missed stops on assigned routes; he attributed these difficulties to his medication that reportedly affected his memory. Transcript at 11. Although claimant disputed that he struck the parked vehicle, he did not dispute that he was accused of that act by an alleged witness and that photos showed property damage. His assertion that the employer unfairly denied him promised medical benefits was refuted by testimony that the employer offered claimant and other employees access to medical coverage but required that employees pay the related premiums. Transcript at 19. The employer provided rational explanations for its actions based on undisputed evidence which was more persuasive than claimant's assertions that the employer's actions were based on racial bias. Under the circumstances, claimant failed to show that his concern regarding racial bias constituted a reason of such gravity that a reasonable and prudent bus driver of normal sensitivity, who had not yet brought that concern to the employer's human resources office,

exercising ordinary common sense, would conclude he had no reasonable alternative but to quit when he did.

Claimant also left work, in part, because he concluded that with his route and resulting hour's restriction and daily 40 mile commute he was not earning enough wages to justify his continued employment. However, claimant earned \$56 per day (4 hours x \$14.00 wage) which easily exceeded the fuel cost of his daily 40 mile commute to work, the only cost of working he specified at hearing. Transcript at 13. Absent a showing that the cost of working for the employer exceeded the remuneration claimant received, or that continuing to work for the employer substantially interfered with his search for other work, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time. See OAR 471-030-0038(5)(e).¹

Claimant had the burden to show that he quit work when he did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet his burden and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-37165 is affirmed.

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

DATE of Service: July 2, 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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¹ OAR 471-030-0038(5)(e) provides: "Reduction in hours: 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..."