

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0606

Affirmed
Disqualification
(Descalificación)

PROCEDURAL HISTORY: On March 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122954). Claimant filed a timely request for hearing. On April 24, 2015, ALJ Vincent conducted a hearing, and on May 14, 2015 issued Hearing Decision 15-UI-38483, affirming the Department's decision. On May 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Inn Home for Boys employed claimant from August 30, 2013 to December 20, 2014 as an on-call direct care staff person.

(2) Before December 2014, the employer's new project manager reduced claimant's work hours.

(3) The last day claimant reported to work was December 15, 2014. On December 17, 2014, at 10:09 p.m., claimant checked the employer's online work program that shows the employee work schedule. The schedule showed claimant that he was scheduled to work on December 18 and 20, 2014. The employer did not include an on-call employee's schedule on its published work schedules without first checking that the on-call employee agreed to work the shift.

(4) Claimant did not report to work or contact the employer on December 18 or 20, 2014. Two of the employer's program directors left telephone messages and sent text messages to claimant on December 18 and 20, asking if he planned to report to work, and when he would return to work. Claimant did not respond to the messages.

(5) Not having heard from claimant, by December 31, 2014, the employer assumed claimant had quit his job. Claimant contacted the employer in March 2015 and said he missed the two scheduled shifts in December 2014 because he was out of town.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

Work Separation. The parties disagreed as to the nature of claimant's work separation, with the employer asserting claimant quit by abandoning his job and claimant asserting the employer discharged him by failing to assign him work. OAR 471-030-0038(2)(a) (August 3, 2011) provides that 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 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).

Claimant testified that, because he was an on-call employee, the employer called him when it had available work, and that the employer did not call him to offer him work after December 15, 2014. Transcript at 4-5. However, the preponderance of the evidence shows that claimant checked the employer's work schedule on December 17, the schedule showed he was scheduled to work on December 18 and 20, and he failed to report to work both those days despite knowing he was scheduled to work. Moreover, the record shows the employer left voicemail and text messages for claimant, and claimant did not return the messages or otherwise contact the employer at that time, or the weeks thereafter. The preponderance of the evidence shows claimant could have continued to work for an additional period of time, and his failure to report for his shifts on December 18 and 20 or return the project managers' messages shows he was unwilling to do so. Thus, the work separation was a voluntary leaving.

Voluntary Quit. 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) (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.

We infer that claimant quit because he assumed the employer had no work for him or because he was dissatisfied that the employer's new project manager reduced his work hours. Rather than assuming the employer had no work for him, claimant had the reasonable alternative of contacting the employer within a reasonable period of time to clarify that he was willing to continue working. Under OAR 471-030-0038(5)(e), an individual who leaves work due to reduction in hours has left work without good cause "unless continuing to work [for the employer] substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." To the extent claimant left work due to a reduction in his hours, claimant provided no evidence or testimony that the reduction in hours interfered in any way with a return to full time work or that the cost of his part time work exceeded his earnings.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 15-UI-38483 is affirmed. *Decisión de la Audiencia 15-UI-38483 queda confirmada.*

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

DATE of Service: July 8, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.