

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0865

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130331). Claimant filed timely a request for hearing. On July 1, 2015, ALJ Buckley conducted a hearing, and on July 8, 2015, issued Hearing Decision 15-UI-41184, affirming the Department's decision. On July 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) (1) McLoughlin Chrysler Jeep employed claimant as a sales representative from March 16 through April 16, 2015.

(2) The employer had a "stair step" pay plan for sales representatives under which the representative received a commission of 20% of the profit margin on each of the first 10 units sold, a commission of 25% of the profit margin on units 11 to 15 sold and a commission of 30% of the profit margin on any unit over 15 sold. Transcript at 20. The employer paid a minimum commission on new and used vehicles sold as well as a volume bonus if certain sales levels were reached. A sales representative received at least the minimum wage for each hour worked as reported by the employee, was permitted a "draw" of \$750 on the 5th and 20th of each month, and was paid a payroll check equal to his earned compensation minus any draws on the 10th of the month. Transcript at 27-28.

(3) Between March 16 and April 17, 2015, claimant averaged over 40 hours per week and earned the required minimum wage for the hours he worked. He received a net check of \$750 on April 5 and a gross paycheck of \$912.98 less his draw total of \$841.38 on April 10. However, he believed he did not receive commissions to which he was entitled to on car sales in which he played a role. When claimant

complained to other sales representatives about what he believed were his missing commissions, they told him “not to worry about it” or that “[it] would all work itself out.” Transcript at 8-9. On April 16, 2015, when claimant complained to the sales manager that he could not afford the gas necessary to travel to work without the commissions to which he thought he was entitled, the sales manager replied told claimant he could not advance claimant any money in commissions or as a gas voucher. Transcript at 11. Claimant then gave the manager notice that he was quitting, effective immediately.

(4) On April 16, 2015, claimant quit work because he believed he “wasn’t making money...wasn’t being paid [his] commissions...was being treated differently and it was costing [him] to work there.” Transcript at 4.

(5) Claimant did not speak with the employer’s office manager about his compensation concerns although he knew other employees had gone to her with paycheck questions in the past because when he was first introduced, the sales manager told him “Don’t come in here.” Transcript at 33-34.

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

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) (August 3, 2011). 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 failed to meet his burden that he had good cause to quit work when he did. Although claimant asserted he could not afford to continue working for the employer any longer because he could not afford the gas necessary for the drive to and from work, claimant made at least the minimum wage and did not assert or show that his costs of working exceeded his level of compensation. Claimant’s concerns about the employer’s commission practices were understandable, but do not support a finding of good cause absent evidence that claimant requested an explanation regarding his paycheck from the employer’s office manager, particularly when he knew past sales employees had “inundated” her office with such questions in the past. Transcript at 32-33. Moreover, claimant had been advised by coworkers that his commission concerns “would all work itself out” and understood that he would receive an advance on his paycheck of \$750 on April 20, 2015, four days after he decided to quit. Claimant failed to show a reasonable and prudent sales representative of normal sensitivity, in his circumstances and exercising ordinary common sense, would have concluded his commission and compensation concerns gave him no reasonable alternative but to quit when he did, four days before he was to receive a paycheck. While claimant was understandably concerned about his ability to support himself, a reasonable person would not have chosen to become unemployed under the circumstances claimant faced, and thereby totally deprive himself of income.

Claimant's assertion in written argument that he "evidenced" at hearing that "he believed he was being treated disparately from other employees in part due to his race (African American)" is without merit. Claimant presented no such evidence and otherwise failed to present evidence that race was ever a factor in the employer's treatment of him. His assertion that "car sales were being taken away from him" without any action from management is also without merit as he failed to show that he addressed specific questions to the sales manager or office manager about why he was not credited with a full or partial commission in connection with the sales transactions he believed he assisted in.

Under ORS 657.176(2)(c), claimant quit work without good cause 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-41184 is affirmed.

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

DATE of Service: August 28, 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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