

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1257

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83040). Claimant filed a timely request for hearing. On September 30, 2015, ALJ Frank conducted a hearing, and on October 8, 2015 issued Hearing Decision 15-UI-45613, affirming the Department's decision. On October 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Both claimant and the employer submitted written arguments that sought to present information not offered into evidence during the hearing. Neither party showed that factors or circumstances beyond the party's reasonable control prevented it from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the new information in either party's argument. EAB considered only evidence in the hearing record when reaching this decision.

FINDINGS OF FACT: (1) Yurz, Inc. employed claimant as a telemarketer in its call center from June 15, 2015 until June 16, 2015.

(2) On June 15, 2015, claimant attended a full-day orientation for newly hired employees. That day, the employer trained claimant on the phones for approximately one hour. The employer required claimant to make at least two sales by the end of the day on June 19, 2015, or he would be let go.

(3) On June 16, 2015, claimant began his first day on the phone trying to sell the employer's products or services. That morning, claimant's computer malfunctioned during some telemarketing calls and the employer's sales script or the potential customer's name sometimes did not appear on his computer monitor as it should have. Without this information, claimant could not proceed with the call. In addition, sometimes the headset to claimant's phone did not work properly and potential customers were unable to hear his voice. Not hearing a voice on their phones after they answered, those customers then hung up. Claimant spoke to the employer's assistant sales manager, who was monitoring the

performance of all the newly hired telemarketers, about his problems with equipment. The assistant sales manager told claimant to continue trying to make calls and he would see about moving claimant to a work area with better functioning equipment. The issues with claimant's equipment continued after he spoke to the assistant manager, and he was unable to get assistance from other employees.

(4) At approximately noon on June 16, 2015, after working on the phones for approximately four hours, claimant decided to quit work because the issues he had with the employer's equipment had not been resolved. On June 16, 2015, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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). "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.

It was not disputed that claimant left work after the intermittent problems he was experiencing with the employer's equipment were not resolved in approximately the first four hours that he worked. While claimant contended that these problems prevented him from working "efficiently" and he was concerned about being let go if these problems resulted in his failure to make two sales by the end of his first work week, the assistant manager had other new hires, like claimant, to help on June 16, 2015. Audio at ~9:00. It was not reasonable for claimant to conclude that anything less than an immediate response to his request for assistance meant that help from the manager would not be forthcoming. As well, there were three and one half work days between noon on June 16, 2015 and the close of business on Friday, June 19, 2015 in which claimant needed to make two sales to retain his job. It was not reasonable for claimant to conclude that the issues with his equipment would not be resolved in sufficient time to allow him to make the required sales. Claimant also did not present any evidence that the equipment difficulties he encountered caused grave personal or professional harm to him that prevented him from continuing to work despite the difficulties. A reasonable and prudent newly-hired telemarketer in claimant's situation would not have concluded that a four hour delay in resolving issues with his equipment on the first day he performed his job duties was a grave reason to leave work, or that it would inevitably and imminently lead to his discharge.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 15-UI-45613 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 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. 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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