

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1296

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 142748). The employer filed a timely request for hearing. On October 13, 2015, ALJ Murdock conducted a hearing, and on October 15, 2015, issued Hearing Decision 15-UI-45909, concluding claimant voluntarily left work without good cause. On November 3, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Boys & Girls Clubs of the Rogue Valley employed claimant, last as a membership services assistant, from May 24, 2007 to December 4, 2014. Claimant's job duties included turning in all payments at the end of each day to the finance director and maintaining receipt tracking sheets for receipts issued for cash, check and credit card payments.

(2) On November 11, 2014, the employer received a call from a member inquiring why a check she had sent for a basketball program fee had not been cashed. The employer determined the check was missing, along with several receipt tracking sheets, and asked the member to issue a new check. The employer conducted an audit and was unable to find the missing documentation.

(3) On November 13, 2014, when the employer questioned claimant about the missing documentation, claimant retrieved it from her personal bag. When further questioned about her actions, claimant had no explanation other than to describe it as a mistake. Audio Record ~ 8:00 to 12:00. The employer's executive director then suspended claimant without pay from November 14 through November 28 while

the employer conducted a complete audit. It allowed claimant to use her paid time off (PTO) for the pay period from November 16 through November 30, 2014.

(4) On December 1, 2014, when claimant returned to work, her supervisor informed her that she was being removed from the membership services assistant position and that a curriculum coordinator position was being created for her with the same pay and benefits. Her supervisor then sent her home and told her she had “a couple of days” to decide whether she would accept the new position, the exact duties of which he would describe to her in a subsequent phone call. Audio Record ~ 17:00 to 19:30.

(5) Between December 1 and December 4, claimant’s supervisor did not call her and claimant did not attempt to call her supervisor. On December 4, 2014, claimant went to the finance director’s office to pick up her check for the November 16 to 30 pay period, turned in her keys to the finance director and stated to her, “tell Diann [the executive director] and Fred [her supervisor] that I am not taking that job,” after which she left. The employer then issued claimant a check for her work on December 1 and the PTO she accrued between December 1 and December 4, 2015. Exhibit 1.

(6) Continuing work was available to claimant when she turned in her keys on December 4, 2015.

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

The first issue to address is the nature of the work separation. 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).

The employer asserted claimant quit on December 4, 2015 when she turned in her keys and told the finance director she was “not taking that job.” Claimant denied that she told the finance director she was “not taking that job” and asserted she was terminated by her supervisor on December 1 when she was told she was being removed from the membership services position. “As far as I’m concerned, when I was told they had given my job to someone else, that’s termination.” Audio Record ~ 27:30 to 27:45. However, for purposes of unemployment insurance benefits, “work” means “the continuing relationship between an employer and an employee,” and does not refer to a particular job or position an employee held with an employer. OAR 471-030-0038(1)(a). Claimant did not turn in her keys on December 1, admitted she was still waiting to hear from her supervisor about her employment status when she turned in her keys on December 4, and her final check was not prepared until after she turned in her keys. Claimant was not terminated from “work” when the employer removed her from her membership services position on December 1 because the employer had another available position for her. More likely than not, claimant could have continued to work for the employer for an additional period of time but chose not to do so on December 4, 2015. Accordingly, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 because she mistakenly believed the employer had discharged her. We have consistently held that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work, or acquiesce to leaving work, if she was unsure if she had been discharged without first pursuing the reasonable alternative of asking the employer whether or not the belief was true.¹ Here, claimant had the option to send her supervisor a text message inquiring about her employment status or contact the executive director by phone or in person to determine if and when she was to return to work, neither of which she pursued. Because claimant had reasonable alternatives to quitting work when she did, she voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-45909 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 10, 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 See accord *John P. Chappina* (Employment Appeals Board, 11-AB-1687, June 24, 2011); *Giang T. Le* (Employment Appeals Board, 09-AB-0270, February 23, 2009); *Samantha J. Gibeau* (Employment Appeals Board, 08-AB-2387, December 10, 2008); *Michael McCarthy* (Employment Appeals Board, 08-AB-2365, December 9, 2008); *Gary P. Bansemar* (Employment Appeals Board, 08-AB-2172, November 21, 2008); *Mary E. Saucedo* (Employment Appeals Board, 08-UIB-1385, July 31, 2008); *Melody A. Cox* (Employment Appeals Board, 08-AB-1166, July 3, 2008); *Dawn R. Scharf* (Employment Appeals Board, 07-AB-1113, June 12, 2007); *Cindy J. Fitzwater*, (Employment Appeals Board, 07-AB-1076, June 7, 2007); *William J. Brummond*, (Employment Appeals Board, 07-AB-0996, May 30, 2007); *Jennifer E. Poncia*, (Employment Appeals Board, 07-AB-0814, May 7, 2007); *Michelle N. Zyla*, (Employment Appeals Board, 06-AB-0169, February 6, 2007); *Mark Knapp*, (Employment Appeals Board, 06-AB-0922, June 6, 2006); *Gladys E. Ruloph*, (Employment Appeals Board, 05-AB-0171, February 22, 2005).