

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1313

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74128). Claimant filed a timely request for hearing. On October 8, 2015, ALJ Wyatt conducted a hearing, and on October 16, 2015 issued Hearing Decision 15-UI-46089, affirming the Department's decision. On November 5, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that presented information not offered into evidence at the hearing. Claimant did not explain why he did not present this information during the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the new information in claimant's written argument. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Gladstone Nissan employed claimant from May 25, 2013 until July 20, 2015, last as finance manager.

(2) In March 2015, claimant was promoted from salesperson to finance manager. Before the promotion, claimant was earning between \$3,000 and \$4,000 per month; after the promotion, his income increased to between \$5,000 and \$6,000 per month.

(3) While claimant worked as a salesperson and later as finance manager, he disliked the behavior of a particular manager. That manager often taunted claimant that he was going to be fired. That manager frequently gave claimant incorrect advice and claimant thought the manager was trying to ensure that he would fail. That manager took items from claimant's desk without claimant's permission and grabbed items for no reason from claimant's hands when he was carrying them. The manager sometimes "zeroed out" claimant's commissions on sales and changed the credit for the sale into his own name. Transcript at 9. While zeroing out claimant's commissions and changing the credit for particular sales

did not affect claimant's commission income, it had a negative impact on management's perceptions of claimant's performance. Transcript at 20. Claimant thought that the manager was harassing him and trying to intimidate him. Once, claimant saw that manager shove a salesperson when he was displeased with the salesperson.

(4) Claimant complained to the employer's general manager and other members of management about the behavior of the particular manager toward him, including that the manager zeroed out his commissions, gave him incorrect instructions and harassed him. The general manager spoke with the manager "on many occasions" about how he was treating claimant and told him "not to do that." Transcript at 20. The general manager also told the particular manager that he needed to help train claimant in his duties as finance manager. Transcript at 20. By July 2015, claimant had stopped complaining about the manager and the general manager thought that claimant and the manager "did not have a lot of daily interactions." Transcript at 20.

(5) Before approximately July 2015, claimant was aware that the employer was not satisfied with his performance as finance manager. On Friday, July 17, 2015, the general manager met with claimant in the workplace and told him that, because of the employer's financial condition, he could not remain in the finance manager position. The general manager told claimant not to clock in to work and to go home. The general manager also told claimant he would be contacting him to let him "know the options" and that he might be returned to a salesperson position. Transcript at 5. On Saturday, July 18, 2015, the general manager contacted claimant and let him know he could continue to work for the employer as a salesperson, and that if the employer's financial position improved, he would be considered for another position. Transcript at 7.

(6) Over the weekend of July 18 and 19, 2015, claimant decided he was unwilling to continue to work for the employer as a salesperson. Claimant did not want to work under the manager who he thought had harassed him, he thought that the compensation he would receive as a salesperson was inadequate to support himself and his family, and he thought that he would not have sufficient time to locate a new, better paying job if he was working twelve hours per day as a salesperson.

(7) On July 20, 2015, claimant notified the employer that he was not going to return to work as a salesperson. Transcript at 24. On that day, claimant voluntarily left work.

CONCLUSIONS AND REASON. Claimant voluntarily left work without good cause.

Claimant appeared to contend that the employer laid him off on July 17, 2015 when the general manager told him he could not continue working as finance manager. Transcript at 6, 7. The general manager contended that the employer did not discharge claimant on July 17, 2015 because it was willing to allow claimant to continue working as a salesperson after that day. Transcript at 25. OAR 471-030-0038(2) (August 3, 2011) sets out the standard for determining whether a work separation was a discharge or a voluntary leaving. If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation was a voluntary leaving. OAR 471-030-0038(2)(a). If claimant was willing to continue to work for the employer for an additional period of time when the work separation occurred but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Although the employer told claimant it was not willing to continue to allow him to work as finance manager on July 17, 2015, it was undisputed that it was willing to allow him to remain working as a salesperson. Transcript at 5, 7, 25. Because the employer was willing to allow claimant to work in this alternate capacity after July 17, 2015, the employer did not involuntarily sever the work relationship. However, by refusing to return to work in the capacity that the employer wanted, claimant manifested that he was unwilling to continue working for the employer. Applying OAR 471-030-0038(2), claimant's work separation was a voluntary leaving on July 20, 2015, the day that he notified the employer that he was not going to accept the position as salesperson.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who leaves work to seek other work has left work without good cause. OAR 471-030-0038(5)(b)(A). A claimant who leaves work due to a reduction in the rate of pay, has left work without good cause unless certain reduction thresholds are met and the reduction in pay was not the result of a transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). 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.

The first reason claimant gave for leaving work was that he was not willing to work under the particular manager who he thought had been harassing and intimidating him. Transcript at 8-14. However, claimant did not dispute that, in response to his complaints about the manager's treatment of him, the employer's general manager dealt with that particular manager and the general manager thought the situation had been resolved by July 2015. Transcript at 20. Absent evidence that claimant notified the employer, and the general manager in particular, that the harassment and intimidation had continued after his initial complaints, claimant did not show that the employer was unable or unwilling to act to remedy the particular manager's objectionable behavior. Claimant therefore did not meet his burden to show that the manager's conduct left him no reasonable alternative to quitting work when he did.

The remaining reasons that claimant contended he left work were that he did not think the compensation he received from the salesperson position was reasonably sufficient to support his family and he thought that continuing to work as a salesperson would be an unreasonable impediment to a search for a better paying position. Transcript at 33-36. With respect to claimant's reduction in pay if he agreed to work as a salesperson, we infer it would be the result of a transfer, demotion or reassignment from his position as finance manager to that of a salesperson. A reduction in pay attributable to those reasons, does not, alone, constitute good cause to leave work. See OAR 471-030-0038(5)(d)(A). Under certain circumstances, a reduction in pay may be so extreme that it would be a grave reason to leave work within the meaning of OAR 471-030-0038(4) such as, for example, when the reduced pay made it unable for a claimant to meet his or his family's minimum monthly living expenses on the reduced pay or where a claimant has an extraordinary level of involuntary expenses. Claimant did not show that he would have faced such a situation had he accepted the salesperson position. Absent such evidence or a like showing of extraordinary circumstances, claimant did not meet his burden to show that the reduction in pay he was going to experience from accepting the position as salesperson was a grave

reason to leave work. With respect to claimant's belief that continuing to work as a salesperson would unreasonably interfere with his job search for a new and better paying position, OAR 471-030-0038(5)(b)(A) is clear that such a reason is not, in and of itself, good cause for leaving work.

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

DECISION: Hearing Decision 15-UI-46089 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 11, 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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