

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1531**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90536). Claimant filed a timely request for hearing. On December 21, 2015, ALJ Seideman conducted a hearing, and on December 23, 2015, issued Hearing Decision 15-UI-49897, concluding the employer discharged claimant, but not for misconduct. On December 28, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Seven Feathers Hotel & Casino Resort employed claimant as a table games dealer from January 25, 2005 to October 28, 2014. Claimant's last wage was \$9.35 per hour, plus tips that averaged over \$10 per hour, and made claimant's hourly compensation approximately \$20 per hour.

(2) On October 27, 2014, the employer notified claimant by letter that her job was being eliminated due to changed economic conditions, effective that day. However, it offered her continuing employment as a full time custodian at the wage of \$10 per hour. The employer requested that claimant respond to its offer in writing by October 29, 2014. On October 28, 2014, claimant declined the custodial position by letter. Audio Record ~ 11:00 to 14:00. Claimant declined the position because without tips her compensation would essentially be cut in half.

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

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).

Claimant asserted she was laid off work on or about October 27, 2014 when she was told her job as a table games dealer was being eliminated as the result of "cutbacks." Audio Record ~ at 7:30 to 9:45. In Hearing Decision 15-UI-49897, the ALJ agreed, reasoning:

The layoff notice was issued by the employer through no fault of the claimant. She wanted to remain working for the employer in the same capacity. However, she could not do so. While technically the employer offered her another position, it was at less than one-half of her income at the time of the layoff. It is not appropriate to treat that as continued employment for the same employer. The job and the pay were so extremely different . . . I conclude the separation was a layoff, which is a discharge.

Hearing Decision 15-UI-49897 at 1-2. However, the ALJ ignored that under OAR 471-030-0038(1)(a), “work” means the continuing relationship between an employer and employee. It is not defined in terms of a particular job, position or rate of pay held by an individual. Claimant knew her job as a table games dealer had ended when she received the employer’s October 27 letter, and declined continuing employment as a full time custodian the following day. Because claimant could have continued to “work” for the employer for an additional period of time in another position, albeit at a lower rate of pay, but was unwilling to do so, 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 asserted that she would have continued to work for the employer as a table games dealer, but declined the custodial position because it paid less than half of her gross pay as a dealer. Under OAR 471-030-0038(5)(d), an individual may demonstrate good cause to leave work due to a reduction in pay under certain circumstances, but that provision does not apply where, as here, the reduction in pay occurs “as a result of transfer, demotion or reassignment.” OAR 471-030-0038(5)(d)(A). Because claimant’s reduction in pay would have been the result of a transfer to a new position, claimant did not demonstrate good cause for leaving work when she did simply because she faced a decrease in her rate of compensation.

Claimant also failed to show, under OAR 471-030-0038(4), that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time. Although claimant disagreed with the employer’s decision to eliminate her job and was understandably reluctant to work full time in another position at less than half of her previous rate of pay, claimant did not show that working full time as a custodian constituted a circumstance of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded she had no reasonable alternative but to leave her employment entirely. Claimant failed to show that her costs of working would have exceeded her compensation or that not working at all with no income was a better alternative than working full time at a reduced level of pay. Finally, under the factors and exceptions set forth in ORS 657.190, the continuing work the employer offered to claimant was a suitable position. Claimant did not assert or show that she was not physically qualified for or lacked sufficient training to perform the work offered and did not present any evidence

that the custodial job reasonably posed a risk to her health, safety or morals. Claimant would have worked at the same location and there was no evidence that she would have been required to work a different shift, or even if she had, that shift would have been unsuitable.

Claimant 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-49897 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 19, 2016**

**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](http://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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