

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0028**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 94150). Claimant filed a timely request for hearing. On November 5, 2015, ALJ Shoemake conducted a hearing in which the employer did not participate, and on November 9, 2015, issued Hearing Decision 15-UI-47384, concluding that the employer discharged claimant, but not for misconduct. On November 18, 2015, the employer filed an application for review with the Employment Appeals Board (EAB). On November 30, 2015, EAB issued Appeals Board Decision 2015-EAB-1369, reversing Hearing Decision 15-UI-47384 and remanding the matter to the Office of Administrative Hearings for further proceedings.

On December 15, 2015, ALJ Shoemake conducted a hearing, and on December 21, 2015, issued Hearing Decision 15-UI-49768, concluding that claimant voluntarily left work without good cause. On January 7, 2016, claimant filed an application for review with EAB.

**FINDINGS OF FACT:** (1) Lanz Cabinet Shop employed claimant from June 5, 2013 to July 11, 2015.

(2) On the employment application claimant submitted to the employer, claimant indicated that he was willing to work overtime and weekends as scheduled and requested.

(3) On October 13, 2014, the employer orally reprimanded claimant for failing to report for work on Saturday, October 11 and failing to inform the employer that he would be absent on that date.

(4) On June 29, 2015, the employer reprimanded claimant in writing for refusing to work until 10:30 p.m. on Saturday, June 27.

(5) Claimant was scheduled to work on Saturday, July 11, 2015. Sometime before his shift was scheduled to begin, claimant called the employer and left a voice mail message in which he stated he would not report for work on that date.

(6) Claimant was scheduled to work on July 13, 14, and 15, 2015, but did not report for work on those dates. On each of those days, the employer's division manager called claimant and left voice mail messages, asking him if would be reporting for work.

(7) On June 28, 2015, the employer's human resources department sent claimant a letter stating that his employment had been terminated and containing his final paycheck.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

We first consider the nature of claimant's 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. OAR 471-030-0038(2)(a) (August 3, 2011). 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 by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant and the employer's witnesses provided completely different accounts of claimant's work separation. Claimant testified that he called the employer's division manager an hour before his shift was scheduled to begin on Saturday, July 11 and told the manager he was not feeling well and was unable to work. Claimant asserted that the manager then told him he needed to report to work; when claimant responded he was sick, the manager indicated he was letting claimant go. Based on this comment, claimant concluded the employer had discharged him. Audio Recording at 12:15. The employer's division manager, however, testified that he was not working on July 11 and did not speak with claimant on that date. According to the manager, claimant left a message that he was not going to work on July 11; claimant then failed to report for scheduled shifts on July 13, 14 and 15, and did not respond to telephone messages left by the manager. Audio Recording at 22:43 and 24:53. Many aspects of claimant's testimony about the circumstances of his work separation were not plausible, however. Claimant provided no details about the illness or condition that allegedly prevented him from reporting for work on July 11. In addition, we note claimant had previously indicated his strong objection to working on Saturday or working late on that day of the week; he was reprimanded twice for refusing to do so. Claimant's lack of concern about his final paycheck also undermined his credibility. Claimant testified that he never received the employer's July 28 letter that contained his paycheck; when the ALJ asked how he got his final check, he responded he thought the check had been directly deposited into his bank account, but was not sure. Audio Recording at 34:49. When the ALJ then asked why he did not request his final paycheck on July 11, the date he believed he had been discharged, claimant replied that he did not know why he did not make this request. Audio Recording at 35:19. It is unlikely that an employee who believed he had been discharged make no immediate effort to obtain his final pay, or check to make sure it had been deposited in his bank account. For these reasons, we find the testimony of the employer's witnesses to be more credible than that of the claimant, and have based our findings on the employer's evidence. We conclude it more likely than not that claimant chose not to report to work on July 11 because he did not want to work on a Saturday, and also chose not to report to work on

July 13 through 15 for unknown reasons. Claimant's actions demonstrated that he was unwilling to continue working for the employer, and his work separation was therefore a voluntary leaving.

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.

Because claimant believed the employer discharged him, he provided no reasons why he left work. He therefore failed to meet his evidentiary burden to demonstrate that he had good cause for quitting his job. Because claimant voluntarily left work without good cause, he is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-49768 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** January 25, 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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